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TITLE 17

PROFESSIONS, OCCUPATIONS, AND BUSINESSES

(CHAPTERS 1-28 IN VOLUME 17A; CHAPTERS 29-79 IN
VOLUME 17B)

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SUBTITLE 3. MEDICAL PROFESSIONS

CHAPTER 81

CHIROPRACTORS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

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SECTION.

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17-81-105. Prosecution of violations.

(a) Subject to reasonable prosecutorial discretion, it is the duty of the prosecuting attorneys of the State of Arkansas to prosecute to final judgment every criminal violation of this chapter committed within their jurisdictions when requested and authorized by the Arkansas State Board of Chiropractic Examiners.

(b)(1) The board may also take administrative action against a person that violates this subchapter, § 5-37-505, or § 5-37-506.

(2) Upon a finding that a chiropractic physician has violated this subchapter, § 5-37-505, or § 5-37-506, the board may order:

- (A) Sanctions;
- (B) A license suspension; or
- (C) A license revocation.

(c) The board has immunity from civil liability for any requested prosecutorial action resulting from this section.

History. Acts 1971, No. 706, § 23; A.S.A. 1947, § 72-437; Acts 2013, No. 513, § 2.
Amendments. The 2013 amendment rewrote the section.

17-81-107. Use of a procurer.

(a) As used in this section:

(1)(A) “Procurer” means a person or entity who for pecuniary benefit procures or attempts to procure a client, patient, or customer by directly contacting the client, patient, or customer in person, by telephone, or by electronic means at the direction of, request of, employment of, or in cooperation with a chiropractic physician.

(B) “Procurer” does not include a provider or a person that procures or attempts to procure a client, patient, or customer for a provider through public media or a person that refers a client, patient, or customer to a provider as otherwise authorized by law; and

(2) “Public media” means telephone directories, professional directories, newspapers and other periodicals, radio and television, billboards, and mailed or electronically transmitted written or visual communications that do not involve in-person or direct contact with specific prospective clients, patients, or customers.

(b) A chiropractic physician who uses a procurer is required to:

(1) Have a written contract with the procurer or procurement company with whom the chiropractic physician engages; and

(2) Register the name of any procurer with whom the chiropractic physician contracts with the Arkansas State Board of Chiropractic Examiners.

History. Acts 2013, No. 513, § 3.

17-81-108. Rulemaking and enforcement.

The Arkansas State Board of Chiropractic Examiners shall establish rules to enforce the requirements of this chapter.

History. Acts 2013, No. 513, § 3.

CHAPTER 82

DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
3. LICENSING GENERALLY.
7. DENTAL HYGIENIST COLLABORATIVE CARE PROGRAM.
8. CRIMINAL BACKGROUND CHECKS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-82-110. Administration of fluoride var-

nish by physicians and nurses.

17-82-110. Administration of fluoride varnish by physicians and nurses.

(a) Following a risk assessment of the child's oral health approved by the Department of Health, a physician may apply fluoride varnish to a child's teeth after the physician has completed training on dental caries risk assessment and fluoride varnish application approved by the department.

(b) Under physician supervision approved by the department, fluoride varnish application may be delegated to a nurse or other licensed health care professional who has completed training on dental caries risk assessment and fluoride varnish application approved by the department.

History. Acts 2011, No. 90, § 1.

provided: "The Department of Health

A.C.R.C. Notes. Acts 2011, No. 90, § 2,

shall adopt rules to implement this act."

SUBCHAPTER 3 — LICENSING GENERALLY

SECTION.

17-82-303. Examinations.

17-82-303. Examinations.

(a) The Arkansas State Board of Dental Examiners has exclusive jurisdiction to determine who shall be permitted to practice dentistry and dental hygiene in the State of Arkansas.

(b) To this end the board, at its regular annual meeting and at special meetings if it deems it necessary or expedient, shall conduct examinations, both written and clinical, of all qualified applicants who desire to practice dentistry or dental hygiene in the State of Arkansas.

(c) The Arkansas State Board of Dental Examiners is authorized and directed to conduct at least two (2) examinations annually, both written and clinical, of qualified applicants who desire to practice dentistry in the State of Arkansas. Special meetings for those purposes may be held

by the board if it deems it necessary or expedient. The two (2) examinations to be held annually shall be scheduled in such a manner as to be conducted following the end of the fall and spring semesters of dental schools in order to accommodate, insofar as is practicable, the greater number of qualified applicants who wish to take examinations to practice dentistry in Arkansas shortly after completion of their regular dental schooling.

(d) The board may accept the results of the National Board of Dental Examination if it so desires and may cooperate with dental schools in other states for the administration of the clinical examination or may cooperate with other states in the administration of a regional clinical examination.

(e)(1) The board shall determine what grade or percentage the applicant must make to entitle him or her to be licensed.

(2) The grade or percentage shall be the same at any one (1) examination for all applicants.

(f) The board may consider the conduct of the applicant during the examination as a factor in determining the grade or percentage to be given him or her.

History. Acts 1955, No. 14, § 19; 1973, No. 85, § 2; 1974 (1st Ex. Sess.), No. 64, § 2; A.S.A. 1947, §§ 72-552, 72-552.1; Acts 2011, No. 47, § 2.

Amendments. The 2011 amendment deleted “but it shall never be lower than seventy-five percent (75%)” from the end of (e)(2).

SUBCHAPTER 7 — DENTAL HYGIENIST COLLABORATIVE CARE PROGRAM

SECTION.	SECTION.
17-82-701. Definitions.	ties of the Department of Health.
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17-82-705. Permission of the Department of Health — Responsibility.	

17-82-701. Definitions.

- As used in this subchapter:
- (1) “Collaborative agreement” means a written agreement between a dentist licensed by the Arkansas State Board of Dental Examiners and a dental hygienist licensed by the Arkansas State Board of Dental Examiners providing that the dental hygienist may provide prophylaxis, fluoride treatments, sealants, dental hygiene instruction, assessment of a patient’s need for further treatment by a dentist, and if delegated by the consulting dentist, other services provided by law to children, senior citizens, and persons with developmental disabilities in a public setting without the supervision and presence of the dentist and without a prior examination of the persons by the dentist;
- (2) “Collaborative dental hygienist” means a dental hygienist who holds a Collaborative Care Permit I, a Collaborative Care Permit II, or

both, from the Arkansas State Board of Dental Examiners and who has entered into a collaborative agreement with no more than one (1) consulting dentist regarding the provision of services under this subchapter;

(3) "Consulting dentist" means a dentist who holds a Collaborative Dental Care Permit from the Arkansas State Board of Dental Examiners and:

(A) If engaged in the private practice of dentistry, has entered into a collaborative agreement with no more than three (3) collaborative dental hygienists regarding the provision of services under this subchapter; or

(B) Is employed by the Department of Health;

(4) "Medicaid" means the medical assistance program established under § 20-77-101 et seq.;

(5) "Public settings" means:

(A) Adult long-term care facilities;

(B) Charitable health clinics that provide free or reduced-fee services to low-income patients;

(C) County incarceration facilities;

(D) Facilities that primarily serve developmentally disabled persons;

(E) Head Start programs;

(F) Homes of homebound patients who qualify for in-home medical assistance;

(G) Hospital long-term care units;

(H) Local health units;

(I) Schools;

(J) Community health centers; and

(K) State correctional institutions; and

(6) "Senior citizen" means a person sixty-five (65) years of age or older.

History. Acts 2011, No. 89, § 1.

17-82-702. Permits — Fees.

(a)(1) A dental hygienist licensed by the Arkansas State Board of Dental Examiners is eligible for a Collaborative Care Permit I if the dental hygienist has:

(A) Practiced as a dental hygienist for one thousand two hundred (1,200) clinical hours; or

(B) Taught for two (2) academic years over the course of the immediately preceding three (3) academic years courses in which a person enrolls to obtain necessary academic credentials for a dental hygienist license.

(2) A dental hygienist licensed by the board is eligible for a Collaborative Care Permit II if the dental hygienist has:

(A) Practiced as a dental hygienist for one thousand eight hundred (1,800) clinical hours; or

(B)(i) Taught for two (2) academic years over the course of the immediately preceding three (3) academic years courses in which a person enrolls to obtain necessary academic credentials for a dental hygienist license; and

(ii) Completed a six-hour continuing-education dental course.

(3) A dentist licensed by the board is eligible for a Collaborative Dental Care Permit.

(b)(1)(A) The board may charge a fee to a dentist who applies for a collaborative dental care permit.

(B) The board shall calculate the fee to cover the costs of administering and processing the application and the costs of inspecting the dentist's practice to determine his or her compliance with rules adopted under this subchapter.

(2)(A) The board may charge a fee to a registered dental hygienist who applies for a collaborative dental care permit.

(B) The board shall calculate the fee to cover the costs of administering and processing the application and the costs of inspecting the registered dental hygienist's practice to determine his or her compliance with rules adopted under this subchapter.

(3)(A) A dentist or registered dental hygienist who holds a collaborative dental care permit shall renew the permit at the same time as a dentist's or registered dental hygienist's permit shall expire.

(B)(i) The board may charge a renewal fee for administering the renewal of the permit.

(ii) The board shall calculate the fee to cover the costs of administering and processing the renewal of the permit.

History. Acts 2011, No. 89, § 1.

17-82-703. Provision of services by collaborative dental hygienists.

(a) A collaborative dental hygienist who obtains a Collaborative Care Permit I may provide prophylaxis, fluoride treatments, sealants, dental hygiene instruction, assessment of the patient's need for further treatment by a dentist, and other services provided by law if delegated by the consulting dentist to children in a public setting without the supervision and direction of a dentist and without a prior examination of the patient by the consulting dentist.

(b) A collaborative dental hygienist who holds a Collaborative Care Permit II may provide prophylaxis, fluoride treatments, sealants, dental hygiene instruction, assessment of the patient's need for further treatment by a dentist, and other services provided by law if delegated by the consulting dentist to children, senior citizens, and persons with developmental disabilities in public settings without the supervision and direction of a dentist and without a prior examination of the patient by the consulting dentist.

History. Acts 2011, No. 89, § 1.

17-82-704. Reimbursement.

(a) A health insurance company, Medicaid, or other person that pays a fee for service performed by a collaborative dental hygienist under this subchapter shall submit the payment directly to the consulting dentist.

(b) If a health insurance company, Medicaid, or other person pays a fee for service performed by a dental hygienist under this subchapter to the collaborative dental hygienist, the collaborative dental hygienist shall deliver the payment to the consulting dentist.

(c)(1) If, however, language in the collaborative agreement required under this subchapter conflicts with a federal law, a federal rule, or a federal regulation, the federal law, federal rule, or federal regulation shall control, and the conflicting language of the agreement shall be disregarded.

(2) For the limited purposes of medicaid reimbursement under this subchapter, the collaborative dental hygienist is deemed to be an employee of the consulting dentist, and the collaborative dental hygienist as a condition of employment under this subchapter shall submit the medicaid payment for services performed under this subchapter to the consulting dentist.

(d) If the consulting dentist for the collaborative dental hygienist is not a participating provider under the terms of a patient's insurance carrier, a health insurance company may pay the patient directly.

History. Acts 2011, No. 89, § 1; 2013, No. 137, § 1. **Amendments.** The 2013 amendment added (d).

17-82-705. Permission of the Department of Health — Responsibilities of the Department of Health.

(a) In order for a collaborative dental hygienist to provide services to persons under this subchapter, the consulting dentist with whom the collaborative dental hygienist has entered a collaborative agreement must have received permission from the Department of Health for the collaborative dental hygienist to serve patients at public settings designated by the department on a date or dates designated by the department.

(b) The department shall develop a system of prioritization of services permitted under this subchapter to communities in the state, including rural areas, based on the relative population of people at need for services permitted under this subchapter and endeavor to direct services permitted under this subchapter to such communities, including rural areas.

History. Acts 2011, No. 89, § 1.

17-82-706. Rules.

(a) The Arkansas State Board of Dental Examiners shall adopt rules to implement §§ 17-82-701 — 17-82-704.

(b) The State Board of Health shall adopt rules to implement § 17-82-705.

History. Acts 2011, No. 89, § 1.

17-82-707 Malpractice insurance.

A collaborative dental hygienist who provides services permitted under this subchapter shall be insured under a malpractice liability policy for the provision of the services.

History. Acts 2011, No. 89, § 1.

SUBCHAPTER 8 — CRIMINAL BACKGROUND CHECKS**SECTION.**

17-82-801. Criminal Background Check.

17-82-802. License eligibility.

SECTION.

17-82-803. Waiver.

17-82-804. Background records sealed.

17-82-801. Criminal Background Check.

(a)(1) Beginning July 1, 2011, every person applying for a license or renewal of a license issued by the Arkansas State Board of Dental Examiners shall provide written authorization to the board to allow the Department of Arkansas State Police to release the results of state and federal criminal history background check reports to the board.

(2) The applicant shall pay the fees associated with the background checks.

(b)(1) The Identification Bureau of the Department of Arkansas State Police shall perform the state criminal background check.

(2) The federal background check shall be requested from the Federal Bureau of Investigation and shall include the taking of fingerprints of the applicant.

(c) Upon completion of the criminal background checks, the Identification Bureau shall forward to the board all releasable information obtained concerning the applicant.

(d) At the conclusion of any background check under this section, the Identification Bureau shall retain the fingerprinting card of the applicant until notified by the board that the person is no longer licensed.

History. Acts 2011, No. 47, § 1.

17-82-802. License eligibility.

A person shall not be eligible to receive or hold a license to practice dentistry or another health care profession issued by the Arkansas State Board of Dental Examiners if the person has pleaded guilty or nolo contendere or has been found guilty of either an infamous crime

that would impact his or her ability to practice dentistry or oral hygiene in the State of Arkansas or a felony, regardless of whether the conviction has been sealed, expunged, or pardoned.

History. Acts 2011, No. 47, § 1.

17-82-803. Waiver.

(a) Section 17-82-802 may be waived by the Arkansas State Board of Dental Examiners upon the request of:

- (1) An affected applicant for licensure; or
- (2) The person holding the license subject to revocation.

(b) The board may consider the following circumstances when considering a waiver, including without limitation:

- (1) The age at which the crime was committed;
- (2) The circumstances surrounding the crime;
- (3) The length of time since the crime;
- (4) Subsequent work history;
- (5) Employment references;
- (6) Character references; and
- (7) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of the public.

History. Acts 2011, No. 47, § 1.

17-82-804. Background records sealed.

(a) A background record received by the Arkansas State Board of Dental Examiners from the Identification Bureau of the Department of Arkansas State Police shall not be available for examination except by:

- (1) An affected applicant for licensure or his or her authorized representative; or
- (2) A person whose license is subject to revocation or his or her authorized representative.

(b) A record, file, or document shall not be removed from the custody of the department.

History. Acts 2011, No. 47, § 1.

CHAPTER 83

DIETITIANS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS DIETETICS LICENSING BOARD.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-83-103. Definitions.

17-83-104. Exemptions.

17-83-103. Definitions.

As used in this chapter:

- (1) “Academy” means the Academy of Nutrition and Dietetics;
- (2) “Commission on Dietetic Registration” means the Commission on Dietetic Registration that is a national certifying agency for voluntary professional credentialing in dietetics and a member of the Institute for Credentialing Excellence;
- (3) “Degree” means a degree received from a United States college or university that was regionally accredited at the time the degree was conferred;
- (4) “Dietetic technician” means one who has completed a dietetic technician program and has received a two-year associate degree from a regionally accredited college or university;
- (5) “Dietetics practice” means the integration and application of the principles derived from the sciences of nutrition, biochemistry, food, physiology, management, and behavioral and social sciences to achieve and maintain people’s health through the provision of nutrition care services;
- (6) “Dietitian” means one engaged in dietetics practice;
- (7) “Institute for Credentialing Excellence” means the national organization that establishes national standards for certifying bodies that attest to the competence of individuals who participate in the health care delivery system, grants recognition to certifying bodies that voluntarily apply and meet the established standards, and monitors the adherence to those standards by the certifying bodies that it has recognized;
- (8) “Licensed dietitian” means a person licensed under this chapter;
- (9) “Nutrition care services” means:
 - (A) Assessing the nutritional needs of individuals and groups of humans and determining resources and constraints in the practice setting;
 - (B) Establishing priorities, goals, and objectives that meet nutritional needs of humans and are consistent with available resources and constraints;
 - (C) Providing nutrition counseling to humans in health and disease;
 - (D) Developing, implementing, and managing nutrition care of, and food service systems for, humans; and
 - (E) Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services for humans;
- (10) “Nutrition counseling” means advising and assisting individuals or groups concerning appropriate nutritional intake by integrating

information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status;

(11) "Nutritional assessment" means the evaluation of the nutritional needs of individuals and groups, based upon appropriate biochemical, anthropometric, physical, and dietary data, to determine nutrient needs and recommend appropriate nutritional intervention, including enteral and parenteral nutrition;

(12) "Provisionally licensed dietitian" means a person provisionally licensed under this chapter; and

(13) "Registered dietitian" means a person registered by the Commission on Dietetic Registration.

History. Acts 1989, No. 392, § 3; 2013, No. 173, § 1.

Amendments. The 2013 amendment rewrote (1); deleted former (2) and redesignated the remaining subdivisions ac-

cordingly; and substituted "Institute for Credentialing Excellence" for "National Commission for Health Certifying Agencies" in (2) and (7).

17-83-104. Exemptions.

This chapter does not affect or prevent:

(1) Dietetics students who engage in clinical practice under the supervision of a dietitian as part of a dietetic education program approved or accredited by the Academy of Nutrition and Dietetics and approved by the Arkansas Dietetics Licensing Board;

(2) A dietitian who is serving in the armed forces or the United States Public Health Service or is employed by the Department of Veterans Affairs from engaging in the practice of dietetics, provided that the practice is related to that service or employment;

(3) A cooperative extension home economist from performing nutrition tasks incidental to the practice of his or her profession, if the person does not hold himself or herself out under the title of dietitian or licensed dietitian;

(4) A licensed physician, pharmacist, or nurse from engaging in the practice of dietetics if incidental to the practice of his or her profession, and if the person does not hold himself or herself out under the title of dietitian or licensed dietitian;

(5) A person employed by, supervised by, under the guidance of, or in consultation with a licensed dietitian, such as a dietetic technician, home economist, dietary manager, or food service supervisor, from performing nutrition tasks in the practice of his or her profession, if the person does not hold himself or herself out under the title of dietitian or licensed dietitian;

(6) A person who has received a doctoral degree from a regionally accredited United States college or university in or with a concentration in human nutrition, food and nutrition, dietetics, public health nutrition, or food systems management;

(7) A nonresident dietitian practicing dietetics in this state, if:

(A) The dietetics are performed for no more than one hundred eighty (180) consecutive working days; and

(B) The dietitian:

(i) Is licensed under the laws of another state that has licensure requirements at least as stringent as the requirements of this chapter, as determined by the board; or

(ii) Has met qualifications as specified in this chapter for the practice of dietetics;

(8) A person who offers weight control programs prepared under the supervision of or approved by a registered dietitian or a licensed dietitian who is licensed under the laws of this state or another state that has licensure requirements at least as stringent as the requirements of this chapter, as determined by the board, if the person does not hold himself or herself out under the title of dietitian or licensed dietitian;

(9) A person employed by a hospital or long-term care facility licensed by the Department of Health or the Department of Human Services and operating under the rules of the Department of Health or the Department of Human Services if the person's practice of dietetics is related to the employment;

(10) A person employed by a facility that is operated by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination if the person's practice of dietetics is related to the employment;

(11) A person who has received a doctoral degree from a regionally accredited United States college or university in or with a concentration in animal nutrition and whose practice is related to the degree;

(12) A health care professional or nutritionist from engaging in dietetics practice without a license under this chapter;

(13) The sale of vitamins, over-the-counter health care products, or food supplements by persons who are not licensed under this chapter; or

(14) Nutritionists from advising customers in regard to vitamins, over-the-counter health care products, or food supplements.

History. Acts 1989, No. 392, § 4; 2013, No. 173, § 2.

Amendments. The 2013 amendment substituted "A" for "Any" throughout; substituted "does not" for "shall not be construed to" in the introductory language; substituted "Academy of Nutrition and Dietetics" for "American Dietetic Association" in (1); substituted "if" for "provided that" in (3), (5), (8) and (10); in (4), deleted

"duly" preceding "licensed physician," substituted "if" for "when," and "and if" for "provided that"; in (9), deleted "and regulations" following "rules"; and substituted "Department of Health or the Department of Human Services if" for "agencies shall be exempt from this chapter, provided that"; substituted "that is operated" for "which is conducted" in (10); rewrote (13); and added (14).

SUBCHAPTER 2 — ARKANSAS DIETETICS LICENSING BOARD

SECTION.

17-83-201. Creation — Members.

17-83-201. Creation — Members.

(a) There is hereby created the Arkansas Dietetics Licensing Board, to commence operations on January 1, 1990.

(b) The board shall consist of seven (7) persons, all of whom are Arkansas residents, with the following qualifications:

(1) Four (4) board members who are licensed dietitians; and

(2) Three (3) board members who are representatives of the public at large.

(c) The members of the board shall be appointed by the Governor with the consent of the Senate and shall serve staggered terms of five (5) years each, beginning January 15 of odd-numbered years.

(d)(1) The four (4) board members who are representative of the dietetics profession shall be selected from a list of ten (10) names submitted to the Governor by the Board of Directors of the Academy of Nutrition and Dietetics.

(2) Each of these board members shall have been practicing dietitians for at least five (5) years preceding their appointment.

(e)(1) Members of the board may be removed from office by the Governor for cause.

(2) In case of death, resignation, or removal, the vacancy of the unexpired term shall be filled by the Governor in the same manner as other appointments.

(3) A person chosen to fill a vacancy shall be appointed only for the unexpired terms of the board member replaced.

(4) No members shall serve more than two (2) consecutive terms.

(f) Each member of the board may receive expense reimbursement in accordance with § 25-16-901 et seq. However, expenses shall in no case exceed the fees collected by the board. All reimbursements for expenses authorized by this chapter shall be paid from the Dietetics Practice Licensing Fund.

History. Acts 1989, No. 392, §§ 8, 10; substituted "Academy of Nutrition and 1997, No. 250, § 156; 2013, No. 173, § 3. Dietetics" for "Dietetic Association" in
Amendments. The 2013 amendment (d)(1).

CHAPTER 86**MASSAGE THERAPISTS**

SUBCHAPTER.

1. GENERAL PROVISIONS.

2. ARKANSAS STATE BOARD OF MASSAGE THERAPY.

3. REGISTRATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-86-102. Definitions.

17-86-104. Criminal background checks.

17-86-102. Definitions.

As used in this chapter:

(1) “Board” means the Arkansas State Board of Massage Therapy;

(2) “Licensee” means an individual licensed under this chapter;

(3)(A) “Massage therapist” means a person who has:

(i) Earned a diploma from a board-accepted school of massage therapy;

(ii) Passed an examination required or accepted by the board; and

(iii) Become licensed and registered to practice massage therapy.

(B) “Massage therapist” includes a person who has previously obtained the massage therapist license under prior state law.

(C) A massage therapist may:

(i) Instruct board-approved continuing education programs; and

(ii) Assist in the instruction of the procedures defined in subdivisions (4)(A)-(C) of this section under the direct supervision of a massage therapy instructor or master massage therapist;

(4)(A) “Massage therapy” means the treatment of soft tissues, which may include skin, fascia, and muscles and their dysfunctions for therapeutic purposes of establishing and maintaining good physical condition, comfort, and relief of pain.

(B) “Massage therapy” is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, and stretching the tissue.

(C) “Massage therapy” also means to engage in the practice of any of the following procedures:

(i) Massage therapy techniques and procedures, either hands-on or with mechanical devices;

(ii) Therapeutic application and use of oils, herbal or chemical preparations, lubricants, nonprescription creams, lotions, scrubs, powders, and other spa services;

(iii) Therapeutic application of hot or cold packs;

(iv) Hydrotherapy techniques;

(v) Heliotherapy, which may include mechanical devices, heat lamps, and other devices;

(vi) Electrotherapy; and

(vii) Any hands-on bodywork techniques and procedures rising to the level of the techniques and procedures intended to be regulated under this chapter and not covered under specific licensing laws of other boards;

(5) “Massage therapy clinic” means a clinic, place, premises, building, or part of a building in which a branch or any combination of branches of massage therapy or the occupation of a massage therapist is practiced;

(6)(A) "Massage therapy instructor" means a person who:

(i) Before July 1, 2010, has completed no less than two hundred fifty (250) hours of practical experience as a master massage therapist, which may be gained, in part or in whole, as an assistant to an instructor in a massage school or may be gained, in part or in whole, as a directed instructor in a massage school and has completed no less than two hundred fifty (250) continuing education hours as approved by the board;

(ii) On or after July 1, 2010, has been an active and practicing licensee and registered as a master massage therapist for a period of not less than three (3) years preceding the application for an upgrade to massage therapy instructor;

(iii) On or after July 1, 2010, in addition to the experience under subdivision (6)(A)(i) of this section, has completed no less than two hundred fifty (250) continuing education hours as approved by the board as a licensed master massage therapist; and

(iv) Is determined by the board to be qualified to be licensed and registered to practice massage therapy.

(B) "Massage therapy instructor" includes a person who has previously obtained the massage therapy instructor license under prior state law.

(C) Massage therapy instructors may:

(i) Instruct board-approved continuing education programs;

(ii) Instruct any of the procedures in subdivision (5) of this section; and

(iii) Instruct basic curricula in a board-registered massage therapy school as required by § 17-86-306(e);

(7) "Massage therapy school" means a registered and licensed facility that meets and follows the required educational standards as established by § 17-86-306 and all pertinent rules established by the board;

(8) "Massage therapy spa" means a site or premises, or portion of a site or premises, in which a massage therapist practices massage; and

(9)(A) "Master massage therapist" means a person who:

(i) Before July 1, 2010, is a licensed and registered massage therapist who has completed no fewer than two hundred fifty (250) hours of practical experience as a massage therapist, which may be gained in part or in whole as an assistant to an instructor in a massage school and has completed no less than one hundred twenty-five (125) continuing education hours as approved by the board;

(ii) On or after July 1, 2010, has been an active and practicing licensee and registered as a massage therapist for a period of not less than two (2) years preceding the application for an upgrade to master massage therapist;

(iii) On or after July 1, 2010, in addition to the experience under subdivision (9)(A)(i) of this section, has completed no less than one hundred twenty-five (125) continuing education hours as approved by the board; and

(iv) Is determined by the board to be qualified to be licensed and registered to practice massage therapy.

- (B) “Master massage therapist” includes a person who has previously obtained the master massage therapist license under a prior state law.
- (C) Master massage therapists may:
 - (i) Instruct board-approved continuing education programs;
 - (ii) Instruct any of the procedures in subdivision (5) of this section; and
 - (iii) Instruct, as directed by a massage therapy instructor, basic curricula in a board-registered massage therapy school as required by § 17-86-306(e);
- (10) “Sexual misconduct” includes:
 - (A) A range of behavior used to obtain sexual gratification against another’s will, at the expense of another, without the client’s knowledge, engaging in sexual activity for profit, or a combination of any of these activities; and
 - (B) Massage of the genitalia, anus, and, except under specific circumstances, the breast; and
- (11) “This chapter” means the “Massage Therapy Act”, § 17-86-101 et seq.

History. Acts 1981, No. 875, § 2; A.S.A. 1947, § 72-1202; Acts 1991, No. 1217, § 1; 1993, No. 714, § 1; 1997, No. 840, § 1; 1999, No. 1461, § 1; 2009, No. 1305, § 1; 2013, No. 1445, § 1.

Amendments. The 2013 amendment substituted “less” for “fewer” throughout the section; inserted “or accepted” in (3)(A)(ii); substituted “(5)” for “(4)” in (6)(C)(iii); inserted (8) and (10) and redesignated the remaining subdivisions accordingly; and substituted “(9)(A)(i)” for “(8)(A)(i)” in present (9)(A)(iii).

17-86-104. Criminal background checks.

An applicant applying as a new massage therapy licensee, an individual applying for a new massage therapy school license, or a licensee applying for an upgrade issued by the Arkansas State Board of Massage Therapy shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau and the Federal Bureau of Investigation.

History. Acts 2013, No. 1445, § 2.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF MASSAGE THERAPY

SECTION.
 17-86-201. Members.
 17-86-203. Powers and duties.

SECTION.
 17-86-204. Records.

17-86-201. Members.

(a)(1) The Arkansas State Board of Massage Therapy shall consist of seven (7) members, who shall be appointed by the Governor for a term of three (3) years.

(2)(A) Six (6) of the members shall be licensees under this chapter. These members shall be full voting members.

(B)(i) Only one (1) of the members shall be an owner of a massage therapy school.

(ii) The member appointed under subdivision (a)(2)(B)(i) of this section shall be a full voting member.

(3) One (1) member, to represent the public, shall not be engaged in or retired from the practice of massage therapy. This member shall be a full voting member.

(4)(A) A board member shall begin his or her appointed term on August 20 of the year in which he or she is appointed.

(B) Board members appointed to their positions shall be selected in equal apportionment from the congressional districts of the state as provided in § 25-16-801 and shall be subject to confirmation by the Senate.

(C) A board position becomes vacant immediately when the member filling that position moves to another state.

(D)(i) The initial terms of the appointed members of the board shall be determined by lot so that three (3) members have a three-year term and two (2) members have a two-year term.

(ii) A person who served on the board is not eligible for an initial appointment.

(5) Board members shall not serve more than six (6) consecutive years on the board.

(b) The Governor may remove members of the board from office according to § 25-16-804. The Governor shall fill any vacancy caused by the removal of any member of the board, by a member's resignation or death, or upon the expiration of a member's term.

(c)(1) A member shall be paid and receive a fee of no less than sixty dollars (\$60.00) per diem for each day actually engaged in attending board meetings or performing other official duties.

(2) All board members shall receive reimbursement for all reasonable and necessary travel at the rate approved for state employees. Lodging and other expenses incurred in the performance of their official duties will also be paid on the approved scale for state employees.

History. Acts 1981, No. 875, §§ 5, 6, 14; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623-6-626, 72-1205, 72-1206, 72-1214; Acts 1991, No. 1217, § 1; 1993, No. 250, § 158; 1993, No. 714, § 2; 1997, No. 250, § 158; 1997, No. 840, § 2; 1999, No. 1461, §§ 3, 4; 1999, No. 1508, § 7(q); 2009, No. 1305, § 2; 2013, No. 1445, §§ 3-6.

Amendments. The 2013 amendment redesignated (a)(2)(B) as present (a)(2)(B)(i), and substituted "one (1)" for

"two (2)" and "an owner" for "owners"; inserted (a)(2)(B)(ii); substituted "August 20 of the year in which he or she is appointed" for "July 1, 2009" in (a)(4)(A); deleted "and two (2) members have a one-year term" at the end of (a)(4)(D)(i); in (a)(4)(D)(ii), deleted "has previously" following "A person who," and substituted "is not" for "shall not"; and in (c)(1), substituted "A member" for "Members" and "sixty dollars (\$60.00)" for "fifty dollars (\$50.00)."

17-86-203. Powers and duties.

(a)(1) The Arkansas State Board of Massage Therapy may promulgate and enforce reasonable rules for the purpose of carrying out this chapter.

(2) The Arkansas State Board of Massage Therapy shall follow the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as to “rule” and “rule-making” definitions and for the adoption and filing of rules.

(3) For the purpose of governing health and safety, the rules shall meet minimum requirements of the law and rules of the State Board of Health.

(b)(1)(A) The Arkansas State Board of Massage Therapy shall inspect or cause an inspection of student records at least one (1) time each year for each massage therapy school operated in this state.

(B) The Arkansas State Board of Massage Therapy and its agents and employees may enter and inspect a massage therapy clinic, spa, or school during operating hours of the business.

(2) The Arkansas State Board of Massage Therapy and its agents and employees shall not request or be granted permission to enter a room of a massage therapy clinic, spa, or school in which a client is receiving treatment from a licensee under this chapter.

(c) The Arkansas State Board of Massage Therapy may hold licensing examinations from time to time at a place or places as the Arkansas State Board of Massage Therapy may designate.

(d)(1) The Arkansas State Board of Massage Therapy may require each original applicant and each upgrade applicant for a license issued by the Arkansas State Board of Massage Therapy to apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation;

(2) The state and federal criminal background check shall conform to applicable federal standards and shall include the taking of fingerprints;

(3) The applicant shall sign a release of information to the Arkansas State Board of Massage Therapy and shall be responsible for the payment of any fees associated with the state and federal criminal background check;

(4)(A) Each applicant who has resided outside of Arkansas shall provide a state and federal criminal background check, including the taking of fingerprints, issued by the state or states in which the applicant resided.

(B) Results shall be sent directly to the Arkansas State Board of Massage Therapy from the agency performing the state and federal criminal background check.

(e)(1) For purposes of this section, an applicant is not eligible to receive or hold a license issued by the Arkansas State Board of Massage

Therapy if the applicant has pleaded guilty or nolo contendere to or been found guilty of a felony or Class A misdemeanor or any offense involving fraud, theft, or dishonesty.

(2) A provision of this section may be waived by the Arkansas State Board of Massage Therapy if:

(A) The conviction is for a Class A misdemeanor and:

(i) The completion of the applicant's sentence and probation or completion of the applicant's sentence or probation of the offense is at least three (3) years from the date of the application; and

(ii) The applicant has no criminal convictions during the three-year period; or

(B) The conviction is for a felony of any classification and:

(i) The completion of the applicant's sentence and probation or the completion of the applicant's sentence or probation of the offense is at least five (5) years from the date of the application; and

(ii) The applicant has no criminal convictions during the five-year period.

(f) The Arkansas State Board of Massage Therapy may permit an applicant to be licensed regardless of having been convicted of an offense listed in this section, upon making a determination that the applicant does not pose a risk of harm to any person served by the Arkansas State Board of Massage Therapy.

(g) In making a determination under subsection (f) of this section, the Arkansas State Board of Massage Therapy may consider the following factors:

(1) The nature and severity of the crime;

(2) The consequences of the crime;

(3) The number and frequency of crimes;

(4) The relationship between the crime and the health, safety, and welfare of persons served by the agency, such as:

(A) The age and vulnerability of victims of the crime;

(B) The harm suffered by the victim; and

(C) The similarity between the victim and persons served by the Arkansas State Board of Massage Therapy;

(5) The time elapsed without a repeat of the same or similar event;

(6) Documentation of successful completion of training or rehabilitation pertinent to the incident; and

(7) Any other information that bears on the applicant's ability to care for others or other relevant information.

(h) If the Arkansas State Board of Massage Therapy waives the provisions of subsection (e) of this section, the Arkansas State Board of Massage Therapy shall submit the reasons for waiving this provision in writing, and the determination and reasons shall be made available to the members of the Arkansas State Board of Massage Therapy for review.

History. Acts 1981, No. 875, §§ 5, 6; 1991, No. 1217, § 1; 1993, No. 714, § 3; A.S.A. 1947, §§ 72-1205, 72-1206; Acts 1997, No. 840, § 4; 1999, No. 1461, § 6;

2009, No. 1305, § 3; 2013, No. 1445, §§ 7, 8.

Amendments. The 2013 amendment, in (b)(1)(A), substituted “an inspection of student records” for “to be inspected,” “for each” for “all,” and “school” for “schools”;

in (b)(1)(B), inserted “spa,” and deleted “any” following “school during”; inserted “spa” in (b)(2); and substituted “the members of the Arkansas State Board of Massage Therapy for review” for “review” in (h).

17-86-204. Records.

(a)(1) The Executive Director of the Arkansas State Board of Massage Therapy shall maintain a record book and computer file in which will be entered the names and addresses of all persons to whom licenses have been granted under this chapter, the license number, and the dates of granting such licenses and renewals thereof, and other matters of record.

(2) The executive director will move to a separate book and file the records of all persons who have died, have let their licenses lapse for three (3) years, whose licenses have been suspended or revoked by the Arkansas State Board of Massage Therapy, or cancelled by the licensee.

(b) The record books and computer files so provided and maintained shall be deemed and considered a book of records and files of records, and they will be kept in a timely manner. A transcript of any record therein or a license number or date of granting such a license to a person charged with a violation of any of the provisions of this chapter shall be admitted as evidence in any of the courts of this state if certified under the hand of the executive director.

(c)(1) The original books, records, and papers of the board shall be maintained at the offices of the board.

(2) A school that closes shall immediately submit all student transcripts to the board office.

(d) Copies of records may be furnished to any person requesting them upon payment of such copying fee as the board may require and as Arkansas state laws and regulations permit. However, licensing exams shall be exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1981, No. 875, § 13; A.S.A. 1947, § 72-1213; Acts 1991, No. 1217, § 1; 1997, No. 840, § 5; 1999, No. 1461, § 7; 2013, No. 1445, § 3.

Amendments. The 2013 amendment redesignated former (c) as present (c)(1); and inserted (c)(2).

SUBCHAPTER 3 — REGISTRATION

SECTION.

- 17-86-303. Massage therapist.
- 17-86-304. Master massage therapist.
- 17-86-305. Massage therapy instructor.
- 17-86-306. Massage therapy school.
- 17-86-307. Massage therapy clinic and spa.
- 17-86-308. Reciprocity.

SECTION.

- 17-86-309. Renewals — Inactive list — Continuing education.
- 17-86-311. Disciplinary actions and penalties.
- 17-86-312. Fees.
- 17-86-313. [Repealed.]

17-86-303. Massage therapist.

(a) In order to be licensed as a massage therapist, the person seeking licensure shall:

(1) Furnish to the Arkansas State Board of Massage Therapy satisfactory proof that he or she is eighteen (18) years of age or older and of good moral character;

(2) Make oath that he or she has not been convicted of, found guilty of, or entered a plea of guilty or nolo contendere to any offense that would constitute a felony or constitute the offense of prostitution, either in this state or the United States, and submit a signed authorization to investigate and have information released to the board;

(3) Present:

(A) A valid photo identification or driver's license, or both; and

(B) A social security card issued in the same name as the applicant or licensee;

(4)(A) Present a high school diploma, Certificate of General Educational Development, or college transcript and credentials issued by a board-accepted massage therapy school or a like institution with no less than five hundred (500) in-classroom hours of instruction.

(B) An applicant shall not submit his or her transcript directly to the board office.

(C) An applicant shall have the massage therapy school submit the transcript directly to the board office.

(D)(i) If the applicant's transcript is not obtainable from the original school, the applicant shall submit a statement to explain why it may not be obtained.

(ii) Other documentation of credentials may be submitted and accepted for licensure at the discretion of the board;

(5) Furnish to the board satisfactory proof of passing an examination recognized and approved by the board;

(6) Present a negative test for tuberculosis that is current at the time of licensure; and

(7) Pay the specified fees, which shall accompany a completed notarized application to the board.

(b) Fees are as follows:

(1) Application fee	\$75.00 Nonrefundable
(2) Original license fee	80.00
(3) Biennial renewal	80.00
(4) Examination fee or reexamination fee	25.00
(5) Duplicate license fee	10.00
(6) Pocket card fee not to exceed ten dollars (\$10.00)	

(c) A person shall not practice massage therapy until his or her official license has been received from the board.

(d) A person who attempts to procure or does procure a license in violation of this section shall be subject to the penalties provided for in § 17-86-103.

History. Acts 1981, No. 875, §§ 7, 9; A.S.A. 1947, §§ 72-1207, 72-1209; Acts 1991, No. 1217, § 1; 1993, No. 714, § 6; 1993, No. 1219, § 26; 1997, No. 840, § 9; 1999, No. 1461, § 11; 2009, No. 1305, § 5; 2013, No. 1445, § 10.

Amendments. The 2013 amendment inserted (a)(3) and (a)(4)(B) through

(a)(4)(D) and redesignated the remaining subdivisions accordingly; inserted “graduate equivalency diploma, Certificate of General Educational Development” in (a)(4)(A); substituted “that is” for “The tuberculosis test must be” in (a)(6); and inserted “Nonrefundable” in (b)(1).

17-86-304. Master massage therapist.

(a) A person who holds a license as a massage therapist issued by the Arkansas State Board of Massage Therapy and who submits satisfactory evidence to the board that he or she has completed and meets the requirements stated in § 17-86-102 is entitled to be upgraded to master massage therapist.

(b) Each application for upgrade to master massage therapist shall be considered a new application for purposes of criminal background checks.

- (c) Fees are as follows:
- (1) Application fee

..... \$75.00 Nonrefundable
- (2) Original license fee

..... 80.00
- (3) Biennial renewal fee

..... 80.00
- (4) Duplicate license fee

..... 10.00
- (5) Pocket card fee not to exceed ten dollars (\$10.00)

History. Acts 1981, No. 875, §§ 7, 9; A.S.A. 1947, §§ 72-1207, 72-1209; Acts 1991, No. 1217, § 1; 1993, No. 714, § 7; 1997, No. 840, § 10; 1999, No. 1461, § 12; 2009, No. 1305, § 6; 2013, No. 1445, § 11.

Amendments. The 2013 amendment substituted “17-86-102” for “17-86-102(3)” in (a); and inserted “Nonrefundable” in (c)(1).

17-86-305. Massage therapy instructor.

(a) A person who holds a license as a master massage therapist issued by the Arkansas State Board of Massage Therapy and who submits satisfactory evidence to the board that he or she has successfully completed and meets the requirements stated in § 17-86-102 shall be entitled to be upgraded to massage therapy instructor.

(b) Each application for upgrade to massage therapy instructor is considered a new application for purposes of criminal background checks.

- (c) Fees are as follows:
- (1) Application fee

.....\$75.00 Nonrefundable
- (2) Original license fee

.....80.00
- (3) Biennial renewal fee

.....80.00
- (4) Duplicate license fee

.....10.00
- (5) Pocket card fee not to exceed ten dollars (\$10.00)

History. Acts 1981, No. 875, §§ 7, 9; A.S.A. 1947, §§ 72-1207, 72-1209; Acts 1991, No. 1217, § 1; 1993, No. 714, § 8;

1997, No. 840, § 11; 1999, No. 1461, § 13; 2009, No. 1305, § 7; 2013, No. 1445, § 12.

Amendments. The 2013 amendment

substituted "17-86-102" for "17-86-102(8)" in (a); and inserted "Nonrefundable" in (c)(1).

17-86-306. Massage therapy school.

(a) A person shall not establish, operate, or maintain a massage therapy school without first having obtained a certificate of massage therapy school licensure issued by the Arkansas State Board of Massage Therapy.

(b) A massage therapy school shall not be approved by the board or granted a certificate of licensure until the appropriate application and inspection forms as prescribed by the board have been completed and approved and the licensure fee has been paid.

(c)(1) Inspection of the school premises shall be made by a board member or board designee, to include without limitation proof of required forms completed and returned to the Executive Director of the Arkansas State Board of Massage Therapy with approval or recommendations.

(d)(1) Schools shall require a physical examination by a medical doctor that the student poses no health risk to give and receive massage.

(2) The school shall be required to maintain proof of the examination and furnish additional information and documents as may be required by the board or its appointee during the inspection.

(e) The board may certify the school and provide for licensure thereof if the school follows a curriculum approved by the board consisting of not fewer than five hundred (500) hours of in-classroom instruction over a term of not fewer than four (4) months consisting of the following subjects:

(1) One hundred seventy-five (175) hours of anatomy, physiology, pathology, and contraindications to massage therapy;

(2) Two hundred twenty-five (225) hours of technique;

(3) Twenty-five (25) hours of hydrotherapy, electrotherapy, and heliotherapy;

(4) Twenty-five (25) hours of hygiene and infection control;

(5) Twenty-five (25) hours of massage therapy law, business management, and professional ethics; and

(6) Twenty-five (25) hours of related subjects as approved by the board.

(f)(1) The fee for establishing a school shall not exceed one thousand dollars (\$1,000).

(2) The initial inspection fee for each school shall not exceed one hundred dollars (\$100).

(3) The annual renewal and inspection fee for each school shall not exceed one hundred dollars (\$100).

(g) The curriculum established in subsection (e) of this section shall be followed for all massage therapy programs.

History. Acts 1981, No. 875, § 8; A.S.A. 1947, § 72-1208; Acts 1991, No. 1217, § 1; 1993, No. 714, § 9; 1997, No. 840, § 12; 1999, No. 1461, § 14; 2009, No. 1305, § 8; 2013, No. 550, § 1; 2013, No. 1445, § 13.

Amendments. The 2013 amendment by No. 550 deleted “and a tuberculosis test verifying that the licensee is free from

contagious tuberculosis” at the end of (d)(1); and deleted “and the tuberculosis test” following “examination” in (d)(2).

The 2013 amendment by No. 1445 in (c)(1), substituted “shall” for “will” and “or board designee, to include without limitation proof of” for “and.”

17-86-307. Massage therapy clinic and spa.

(a) A person shall not establish, maintain, or operate a massage therapy clinic or massage therapy spa, or both, until the address and telephone number of the office, clinic, or spa have been supplied in writing to the Arkansas State Board of Massage Therapy.

(b) If a massage therapy clinic, massage therapy spa, or both moves to a new location or changes its phone number, the new address or phone number, or both, shall be submitted immediately to the board in writing before operating the clinic or spa, or both, at the new address.

(c) The annual inspection fee for each clinic and spa shall not exceed seventy-five dollars (\$75.00).

History. Acts 1981, No. 875, § 8; A.S.A. 1947, § 72-1208; Acts 1991, No. 1217, § 1; 1993, No. 714, § 10; 1997, No. 840, § 13; 1999, No. 1461, § 15; 2013, No. 1445, § 14.

Amendments. The 2013 amendment inserted “and spa” in the section heading; in (a), substituted “A person shall not” for

“No person may” and “clinic or spa have” for “or clinic has”; inserted “or massage therapy spa, or both” or similar language in (a) and (b); in (b), substituted “If” for “In the event,” “shall be submitted immediately” for “will be immediately submitted” and “before” for “prior to”; and added (c).

17-86-308. Reciprocity.

(a)(1) The Arkansas State Board of Massage Therapy may enter into reciprocal relations with other states and territories whose licensure requirements are substantially the same as those provided in this chapter.

(2)(A) If the applicant’s transcript is not obtainable from the original school, the applicant shall submit a statement to explain why it may not be obtained.

(B) Other documentation of credentials may be submitted and accepted for licensure at the discretion of the board.

(b)(1) An out-of-state applicant holding a current massage therapy license issued by another state and after receiving an Arkansas massage therapy license may apply for an upgrade to master massage therapist or massage therapy instructor by providing appropriate continuing education credits and experience gained before Arkansas licensure for board approval.

(2) An upgrade request shall be made by submitting a complete application package and paying the fees required by this chapter.

History. Acts 1981, No. 875, § 17; A.S.A. 1947, § 72-1217; Acts 1991, No. 1217, § 1; 1993, No. 714, § 11; 1997, No. 840, § 14; 1999, No. 1461, § 16; 2009, No. 1305, § 9; 2013, No. 1445, § 15.

Amendments. The 2013 amendment redesignated former (a) as present (a)(1); and added (a)(2).

17-86-309. Renewals — Inactive list — Continuing education.

(a)(1)(A) A license issued under this chapter is valid for two (2) years and expires on the licensee's birthday.

(B)(i) If a license issued under this chapter is not renewed by the first day of the month preceding the birthdate of the licensee in the biennial renewal year, the license expires.

(ii)(a) If a license expires under subdivision (a)(1)(B)(i) of this section, the applicant shall submit a new application that requires the applicant to meet current requirements and successfully complete an examination recognized by the Arkansas State Board of Massage Therapy.

(b) The board shall issue a license effective as of the date of receipt of the late application and all new applicant fees.

(c) An individual licensee who is not currently in practice and who wishes to place his or her license on the inactive list may remain on the inactive list for not more than four (4) years without reexamination.

(b) A renewal application for a licensee is due on or before the first day of the month preceding the month of the birthdate of the licensee in the biennial renewal year.

(c) A renewal application for a licensee postmarked after the first day of the month preceding the month of the birthdate of the licensee of the biennial renewal year shall be levied a late penalty fee not to exceed twenty-five dollars (\$25.00).

(d)(1) An application for renewal postmarked after the birthdate of the licensee in the biennial renewal year will be treated as an application to renew an expired license.

(2)(A) A license is expired if the application is postmarked after the birthdate of the licensee in the biennial renewal year.

(B) Before the board issues a new license to an applicant whose license has expired under subdivision (d)(2)(A) of this section, the applicant shall:

(i) Submit a new application that requires the applicant to meet current requirements; and

(ii) Successfully complete an examination recognized by the board.

(e) The board shall issue a license effective as of the date of receipt of the late application and all renewal fees, penalties, and required documentation.

(f)(1) Any individual licensee who is not currently in practice and who wishes to place his or her license on the inactive list may remain on this list for a period not to exceed four (4) years without reexamination.

(2) After the time allowed under subdivision (f)(1) of this section, all inactive licensees shall meet current requirements for licensure and

must successfully complete an examination recognized by the board before resuming the active practice of massage therapy.

(g) Any individual licensee who has been placed on the inactive list for fewer than four (4) years and who wishes to reactivate his or her license shall follow the procedures for license renewal as provided for in this section, present satisfactory evidence of completion of continuing education hours as required by subsection (a) of this section for the inactive period, and pay all appropriate fees before resuming the active practice of massage therapy.

(h) The fee for placement on the inactive list shall not exceed eighty dollars (\$80.00) per biennium.

(i)(1) A licensee whose massage therapy school license renewal is postmarked after April 30 of each year shall pay a late fee not to exceed five hundred dollars (\$500).

(2) A massage therapy school license renewal postmarked after June 30 of each year automatically expires.

(3) A licensee whose massage therapy school license has expired shall submit a new application to the board with current requirements and fees.

(j)(1) Each application for continuing education programs shall be accompanied by an application fee not to exceed forty dollars (\$40.00).

(2)(A) A licensee holding a valid Arkansas massage therapy license may request board approval of appropriate continuing education courses otherwise not approved by the board.

(B) Courses shall meet similar standards as courses approved by the board.

(C) Proof of residency shall accompany the request.

History. Acts 1981, No. 875, §§ 9, 10; A.S.A. 1947, §§ 72-1209, 72-1210; Acts 1991, No. 1217, § 1; 1993, No. 714, § 12; 1997, No. 840, § 15; 1999, No. 1461, § 17; 2009, No. 1305, § 10; 2013, No. 1445, §§ 16, 17.

Amendments. The 2013 amendment rewrote (a)(1); and deleted “residing out of state and” following “A licensee” in (j)(2)(A).

17-86-311. Disciplinary actions and penalties.

(a) The Arkansas State Board of Massage Therapy may deny, suspend, place on probation, or revoke a license upon any one (1) of the following grounds:

(1) Conviction of, finding of guilt, or entry of a plea of guilty or nolo contendere to a felony, Class A misdemeanor, or prostitution;

(2) Malpractice or gross incompetency;

(3) The use in advertisements of untruthful or improbable statements or flamboyant, exaggerated, or extravagant claims concerning the licensee’s professional excellence or abilities;

(4) Habitual drunkenness or habitual use of any illegal drugs;

(5) Serving alcoholic beverages at the clinic or school in a room where massage therapy is being performed or in a massage therapy school;

(6) Moral turpitude or immoral or unprofessional conduct;

(7) Failure to comply with the Arkansas State Board of Massage Therapy Code of Ethics or any valid regulation or order of the board;

(8) Invasion of the field of practice of any profession for which a license is required, the diagnosis of ailments, diseases, or injuries of human beings, the performance of osseous adjustments, prescription of medications, or other breaches of the scope of practice of massage therapy;

(9) Failure of any licensee to comply with this chapter; or

(10) Failure to have licensed personnel to perform massage therapy techniques in his or her clinic or school.

(b)(1) The board shall establish by rule the penalty system to be imposed under this section.

(2) Whenever the board finds that the holder of a license, certificate of registration, or other permit issued by the board is guilty of a violation of the rules of the board or the laws of the state pertaining to any occupation, profession, or business licensed or regulated by the board, the board may impose a penalty on the licensee or permit holder in lieu of suspension or revocation of license, certificate of registration, or other permit.

(3)(A) Upon imposition of a penalty in lieu of suspension or revocation of license, certificate of registration, or other permit, the board may require that the licensee or permit holder pay a penalty to the board.

(B) The license, certificate of registration, or permit shall be suspended until the penalty is paid.

(4)(A) The penalty may be imposed in lieu of revocation or suspension of a license, certificate, or other permit only if the board formally finds that the public health, safety, welfare, and morals would not be impaired and that the payment of the penalty will achieve the desired disciplinary results.

(B) The minimum penalty imposed by the board in lieu of revocation or suspension of a license, certificate, or other permit shall be twenty-five dollars (\$25.00) and the maximum penalty one thousand dollars (\$1,000) per infraction.

(C) The authority of the board to impose penalties under this section is not affected by any other civil or criminal proceeding concerning the same violation.

(D) A person penalized by the board under this chapter may appeal any order of the board in the manner currently provided by law.

(E) In addition to any other sanctions authorized by this chapter, the board may impose a civil penalty as provided in this subsection against any unlicensed person, firm, or corporation practicing or offering to practice any actions requiring licensure under this chapter.

(c)(1) The massage therapist-patient relationship is founded on mutual trust. Sexual misconduct is prohibited.

(2) The board shall revoke the license of a person who engages in the practice of massage of the breasts unless the massage therapist:

(i) Engages in the practice of massage of the breasts for therapeutic and medical purposes including without limitation the reduction of scar tissue following a surgery on the breast, release of myofascial binding, or improving lymphatic flow; and

(ii) Has received at least forty-eight (48) hours of continuing education credits in lymphatic massage, myofascial massage, or oncology massage.

(3) A suspension of a license under subdivisions (c)(1) and (2) of this section shall be for a period of three (3) years.

(d)(1) Charges may be brought by any person, or the board on its own motion may direct the Executive Director of the Arkansas State Board of Massage Therapy to prefer charges.

(2) Any accusation of any of the offenses enumerated in this section may be filed with the executive director. The accusations shall be in writing, signed by the accuser, and verified under oath.

(e) In denying, suspending, or revoking any license, the board shall afford any party review as provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and as otherwise provided by the rules and regulations of the board.

History. Acts 1981, No. 875, § 12; A.S.A. 1947, § 72-1212; Acts 1991, No. 1217, § 1; 1993, No. 714, § 14; 1997, No. 840, § 17; 1999, No. 1461, § 19; 2009, No. 1305, § 12; 2013, No. 1445, §§ 18-20.

Amendments. The 2013 amendment inserted “place on probation” in (a); in (a)(5), deleted “or having a permit to serve” following “Serving,” and inserted

“In a room ... therapy school”; substituted “Moral” for “Engaging in moral” in (a)(6); inserted “the Arkansas State Board of Massage Therapy Code of Ethics or” in (a)(7); deleted “the provisions of” following “comply with” in (a)(9); rewrote (c)(1); and substituted “suspension” for “revocation” in (c)(3).

17-86-312. Fees.

(a) All registration fees and other fees due the Arkansas State Board of Massage Therapy shall be paid in accordance with the provisions of this chapter and all other laws and regulations of this state.

(b)(1) The initial inspection fee for a massage therapy school shall not exceed one hundred dollars (\$100).

(2) The annual renewal and inspection fee for a massage therapy school shall not exceed one hundred dollars (\$100).

(3) A licensee whose massage therapy school license renewal is postmarked after April 30 of each year shall pay a late fee not to exceed five hundred dollars (\$500).

History. Acts 1981, No. 875, § 9; A.S.A. 1947, § 72-1209; Acts 1991, No. 1217, § 1; 1997, No. 840, § 18; 2013, No. 1445, § 21.

Amendments. The 2013 amendment redesignated the former introductory language as present (a); and inserted (b).

17-86-313. [Repealed.]

Publisher's Notes. This section, concerning grandfather clause and ability to upgrade status, was repealed by Acts

2013, No. 1445, § 22. This section was derived from Acts 1997, No. 840, § 19.

CHAPTER 87**NURSES****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF NURSING.
3. LICENSING.
6. NURSE LICENSURE COMPACT.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

- 17-87-101. License required — Purpose.
17-87-102. Definitions.

SECTION.

- 17-87-103. Exceptions.
17-87-104. Penalty.

17-87-101. License required — Purpose.

(a) In order to safeguard life and health, a person practicing or offering to practice nursing for compensation shall be required to submit evidence that he or she is qualified to so practice and shall be licensed as provided in this chapter:

- (1) Professional nursing;
- (2) Advanced practice registered nursing;
- (3) Registered practitioner nursing;
- (4) Practical nursing; or
- (5) Psychiatric technician nursing.

(b) It is unlawful for any person not licensed by the Arkansas State Board of Nursing:

(1) To practice or offer to practice professional nursing, advanced practice registered nursing, registered practitioner nursing, practical nursing, or psychiatric technician nursing; or

(2) To use any sign, card, or device to indicate that the person is a professional registered nurse, an advanced practice registered nurse, a registered nurse practitioner, a licensed practical nurse, or a licensed psychiatric technician nurse.

History. Acts 1971, No. 432, § 1; 1979, No. 613, § 1; 1980 (1st Ex. Sess.), No. 14, § 1; A.S.A. 1947, § 72-745; Acts 1995, No. 409, § 1; 2013, No. 604, § 1.

Amendments. The 2013 amendment substituted "is unlawful" for "shall be unlawful" in (b); and inserted "registered" following "practice" in (b)(1) and (b)(2).

17-87-102. Definitions.

As used in this chapter:

- (1) "Board" means the Arkansas State Board of Nursing;
- (2) "Collaborative practice agreement" means a written plan that identifies a physician who agrees to collaborate with an advanced practice registered nurse in the joint management of the health care of the advanced practice registered nurse's patients, and outlines procedures for consultation with or referral to the collaborating physician or other health care professionals as indicated by a patient's health care needs;
- (3) "Consulting physician" means a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., with obstetrical privileges in a hospital, who has agreed to practice in consultation with a certified nurse midwife;
- (4)(A) "Practice of advanced practice registered nursing" means the delivery of health care services for compensation by professional nurses who have gained additional knowledge and skills through successful completion of an organized program of nursing education that certifies nurses for advanced practice roles as certified nurse practitioners, certified nurse anesthetists, certified nurse midwives, and clinical nurse specialists.
 - (B) "Practice of advanced practice registered nursing" consists of:
 - (i) "Practice of certified nurse practitioner nursing" means the performance for compensation of nursing skills by a registered nurse who, as demonstrated by national certification, has advanced knowledge and practice skills in the delivery of nursing services.
 - (5) "Practice of certified nurse midwifery" means the performance for compensation of nursing skills relevant to the management of women's health care, focusing on pregnancy, childbirth, the postpartum period, care of the newborn, family planning, and gynecological needs of women, within a health care system that provides for consultation, collaborative management, or referral as indicated by the health status of the client;
 - (6)(A) "Practice of registered nurse practitioner nursing" means the delivery of health care services for compensation in collaboration with and under the direction of a licensed physician or under the direction of protocols developed with a licensed physician.
 - (B) A registered nurse practitioner is authorized to engage in activities as recognized by the nursing profession and as authorized by the board.
 - (C) This subdivision (8) does not limit a registered nurse practitioner from engaging in activities that normally constitute the practice of nursing, or activities that may be performed by persons without the necessity of the license to practice medicine.
 - (7)(A) "Practice of certified registered nurse anesthesia" means the performance for compensation of advanced nursing skills relevant to

the administration of anesthetics under the supervision of, but not necessarily in the presence of, a licensed physician, licensed dentist, or other person lawfully entitled to order anesthesia.

(B) A certified registered nurse anesthetist may order nurses, within his or her scope of practice, to administer drugs preoperatively and postoperatively in connection with an anesthetic or other operative or invasive procedure, or both, that will be or has been provided.

(8) "Practice of clinical nurse specialist nursing" means the performance for compensation of nursing skills by a registered nurse who, through study and supervised practice at the graduate level and as evidenced by national certification, has advanced knowledge and practice skills in a specialized area of nursing practice;

(9) "Practice of practical nursing" means the performance for compensation of acts involving the care of the ill, injured, or infirm or the delegation of certain nursing practices to other personnel as set forth in regulations established by the board under the direction of a professional registered nurse, an advanced practice registered nurse, a licensed physician, or a licensed dentist, which acts do not require the substantial specialized skill, judgment, and knowledge required in professional nursing;

(10) "Practice of professional nursing" means the performance for compensation of any acts involving:

(A) The observation, care, and counsel of the ill, injured, or infirm;

(B) The maintenance of health or prevention of illness of others;

(C) The supervision and teaching of other personnel;

(D) The delegation of certain nursing practices to other personnel as set forth in regulations established by the board; or

(E) The administration of medications and treatments as prescribed by practitioners authorized to prescribe and treat in accordance with state law when such acts require substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social sciences; and

(11) "Practice of psychiatric technician nursing" means the performance for compensation of acts involving the care of the physically and mentally impaired, injured, or infirm or the delegation of certain nursing practices to other personnel as set forth in regulations established by the board, and the carrying out of medical orders under the direction of a professional registered nurse, an advanced practice registered nurse, a licensed physician, or a licensed dentist, when such activities do not require the substantial specialized skill, judgment, and knowledge required in professional nursing.

History. Acts 1971, No. 432, § 2; 1979, No. 404, §§ 1, 7; 1979, No. 613, § 2; A.S.A. 1947, § 72-746; Acts 1995, No. 409, § 2; 1997, No. 1065, § 1; 1999, No. 1208, § 1; 2013, No. 604, § 2.

Amendments. The 2013 amendment inserted "registered" following "practice"

in (2) and (4)(A); substituted "certified" for "advanced" in (4)(A) and (4)(B)(i); inserted present (4)(B); inserted "certified" in (5); substituted "A registered nurse practitioner is" for "Registered nurse practitioners shall be" in (6)(B); rewrote (6)(C); substituted "his or her" for "their" in present

(7)(B); in (9), substituted “professional registered” for “registered professional”; and inserted “registered” following “practice”; and, in (11), substituted “mentally impaired” for “mentally ill, retarded,” substituted “professional registered” for “registered professional,” and inserted “registered” following “practice.”

17-87-103. Exceptions.

This chapter does not prohibit:

- (1) The furnishing of nursing assistance in an emergency;
- (2) The practice of nursing that is incidental to their program of study by students enrolled in nursing education programs approved by the Arkansas State Board of Nursing;
- (3) The practice of any legally qualified nurse of another state who is employed by the United States Government or any bureau, division, or agency while in the discharge of his or her official duties in installations where jurisdiction has been ceded by the State of Arkansas;
- (4) The practice of any legally qualified and licensed nurse of another state, territory, or foreign country whose responsibilities include transporting patients into, out of, or through this state while actively engaged in patient transport that does not exceed forty-eight (48) hours in this state;
- (5) Nursing or care of the sick when done in connection with the practice of the religious tenets of any church by its adherents;
- (6) The care of the sick when done in accordance with the practice of religious principles or tenets of any well-recognized church or denomination that relies upon prayer or spiritual means of healing;
- (7) The administration of anesthetics under the supervision of, but not necessarily in the presence of, a licensed physician, dentist, or other person lawfully entitled to order anesthesia by a graduate nurse anesthetist awaiting certification results while holding a temporary permit;
- (8) The administration of anesthetics under the supervision of, but not necessarily in the presence of, a licensed physician, dentist, or other person lawfully entitled to order anesthesia by a registered nurse who is enrolled as a bona fide student pursuing a course in a nurse anesthesia school that is approved by a nationally recognized accrediting body and whose graduates are acceptable for certification by a nationally recognized certifying body, provided the giving or administering of the anesthetics is confined to the educational requirements of the course and under the direct supervision of a qualified instructor;
- (9) Hospital-employed professional paramedics from administering medication for diagnostic procedures under the direction of a physician;
- (10) The prescription and administration of drugs, medicines, or therapeutic devices in the presence of and under the supervision of an advanced practice registered nurse holding a certificate of prescriptive authority, a licensed physician, or licensed dentist by a registered nurse who is enrolled as a student in an advanced pharmacology course, provided the prescription or administration of drugs or medicines, or both, is confined to the educational requirements of the course and under the direct supervision of a qualified instructor;

(11)(A) The administration of glucagon to a student who is suffering with diabetes by trained volunteer school personnel designated as care providers in a plan developed under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., as it existed on July 1, 2013, who have been trained by a licensed nurse employed by a school district or other health care professional to administer glucagon to a child with diabetes in an emergency situation.

(B)(i) A licensed nurse employed by a school district or other health care professional shall annually train volunteer school personnel designated as care providers in a plan developed under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., as it existed on July 1, 2013, to administer glucagon to a student with diabetes.

(ii) The parent or guardian of a student with diabetes shall sign an authorization to allow the administration of glucagon to the student by volunteer school personnel designated as care providers.

(iii) The school district shall maintain a copy of the plan developed under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., as it existed on July 1, 2013, a list of volunteer school personnel who are designated as care providers and trained to administer glucagon, and a copy of the parent's or guardian's signed authorization.

(C) A school district, school district employee, or an agent of a school district, including a health-care professional who trained volunteer school personnel designated as care providers, shall not be liable for any damages resulting from his or her actions or inactions under this section.

(D) The Arkansas State Board of Nursing and the State Board of Education shall promulgate rules necessary to administer this subdivision (11); or

(12)(A) Health maintenance activities by a designated care aide for a:

(i) Competent adult at the direction of the adult; or

(ii) Minor child or incompetent adult at the direction of a caretaker.

(B) As used in this section:

(i) "Caretaker" means a person who is:

(a) Directly and personally involved in providing care for a minor child or incompetent adult; and

(b) The parent, foster parent, family member, friend, or legal guardian of the minor child or incompetent adult receiving care under subdivision (12)(B)(i)(a) of this section;

(ii) "Competent adult" means an individual who:

(a) Is eighteen (18) years of age or older; and

(b) Has the capability and capacity to make an informed decision; and

(iii) "Health maintenance activities" means activities that:

(a) Enable a minor child or adult to live in his or her home; and

(b) Are beyond activities of daily living that:

(1) The minor child or adult is unable to perform for himself or herself; and

(2) The attending physician, advanced practice registered nurse, or registered nurse determines can be safely performed in the minor child's or adult's home by a designated care aide under the direction of a competent adult or caretaker.

(C) As used in this section, "home" does not include:

- (i) A nursing home;
- (ii) An assisted living facility;
- (iii) A residential care facility;
- (iv) An intermediate care facility; or
- (v) A hospice care facility.

(D) The board, with the input of the Home Health Care Service Agency Advisory Council, the Arkansas Health Care Association, and the Arkansas Residential Assisted Living Association, shall promulgate rules specifying which health maintenance activities are not exempted under this subdivision (12) and the minimal qualifications required of the designated care aide.

History. Acts 1971, No. 432, §§ 1, 2, 17; 1979, No. 404, §§ 1, 7; 1979, No. 613, §§ 1, 2; 1980 (1st Ex. Sess.), No. 14, §§ 1, 3; 1985, No. 189, § 2; A.S.A. 1947, §§ 72-745, 72-746, 72-761; Acts 1995, No. 409, § 3; 1997, No. 1065, § 2; 2005, No. 1440, § 1; 2011, No. 1204, § 1; 2013, No. 604, §§ 3, 4; 2013, No. 1232, § 1.

A.C.R.C. Notes. Acts 2011, No. 1204, § 1 omitted language without striking through previously existing language in amending § 17-87-103 (12)(B)(i)(b) and added new language without underlining the amending language in § 17-87-103 (12)(B)(i)(b). A.C.R.C. has determined that the omitted language was intended to be repealed, the new language is amending language that replaces the repealed language, and § 17-87-103 (12)(B)(i)(b) is

set out to reflect that intent.

Amendments. The 2011 amendment inserted present (11) and redesignated the following subdivision accordingly; substituted "(12)(B)(i)(a)" for "(11)(B)(i)(a)" in present (12)(B)(i)(b); and substituted "this subdivision (12)" for "this subdivision (11)" in present (12)(D).

The 2013 amendment by No. 604 inserted "registered" following "practice" in (10) and in (12)(B)(iii)(b)(2).

The 2013 amendment by No. 1232, substituted "with" for "from type 1" in (11)(A); in (11)(A), (11)(B)(i) and (11)(B)(iii), substituted "July 1, 2013" for "July 1, 2011" and inserted "29 U.S.C. 701 et seq."; and deleted "type 1" preceding "diabetes" in (11)(B)(i) and (11)(B)(ii).

17-87-104. Penalty.

(a)(1) It shall be a misdemeanor for any person to:

(A) Sell or fraudulently obtain or furnish any nursing diploma, license, renewal, or record, or aid or abet therein;

(B) Practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(C) Practice professional nursing, advanced practice nursing, registered nurse practitioner nursing, practical nursing, or psychiatric technician nursing as defined by this chapter unless licensed by the Arkansas State Board of Nursing to do so;

(D) Use in connection with his or her name any of the following titles, names, or initials, if the user is not properly licensed under this chapter:

- (i) Nurse;
- (ii) Registered nurse or R.N.;
- (iii) Advanced practice nurse, advanced practice registered nurse, A.P.N., or A.P.R.N., or any of the following:
 - (a) Advanced registered nurse practitioner, certified nurse practitioner, A.R.N.P., A.N.P., or C.N.P.;
 - (b) Nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.;
 - (c) Nurse midwife, certified nurse midwife, licensed nurse midwife, C.N.M., or L.N.M.; or
 - (d) Clinical nurse specialist or C.N.S.;
- (iv) Registered nurse practitioner, N.P., or R.N.P.;
- (v) Licensed practical nurse, practical nurse, or L.P.N.;
- (vi) Licensed psychiatric technician nurse, psychiatric technician nurse, L.P.T.N., or P.T.N.; or
- (vii) Any other name, title, or initials that would cause a reasonable person to believe the user is licensed under this chapter;

(E) Practice professional nursing, advanced practice nursing, registered nurse practitioner nursing, practical nursing, or psychiatric technician nursing during the time his or her license shall be suspended;

(F) Conduct a nursing education program for the preparation of professional nurses, advanced practice registered nurses, nurse practitioners, practical nurses, or psychiatric technician nurses unless the program has been approved by the board;

(G) Prescribe any drug or medicine as authorized by this chapter unless certified by the board as having prescriptive authority, except that a certified registered nurse anesthetist shall not be required to have prescriptive authority to provide anesthesia care, including the administration of drugs or medicines necessary for the care; or

(H) Otherwise violate any provisions of this chapter.

(2) Such misdemeanor shall be punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500). Each subsequent offense shall be punishable by fine or by imprisonment of not more than thirty (30) days, or by both fine and imprisonment.

(b)(1) After providing notice and a hearing, the board may levy civil penalties in an amount not to exceed one thousand dollars (\$1,000) for each violation against those individuals or entities found to be in violation of this chapter or regulations promulgated thereunder.

(2) Each day of violation shall be a separate offense.

(3) These penalties shall be in addition to other penalties which may be imposed by the board pursuant to this chapter.

(4) Unless the penalty assessed under this subsection is paid within fifteen (15) calendar days following the date for an appeal from the

order, the board shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

History. Acts 1971, No. 432, § 18; 1980 (1st Ex. Sess.), No. 14, § 4; A.S.A. 1947, § 72-762; Acts 1995, No. 409, § 4; 2013, No. 604, §§ 5, 6.

Amendments. The 2013 amendment inserted "advanced practice registered

nurse" and "A.P.R.N," in (a)(1)(D)(iii); inserted "certified nurse practitioner" and "C.N.P." in (a)(1)(D)(iii)(a); and inserted "registered" following "practice" in (a)(1)(F).

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF NURSING

SECTION.

17-87-201. Creation — Members.

17-87-203. Powers and duties.

SECTION.

17-87-205. Prescriptive Authority Advisory Committee.

17-87-201. Creation — Members.

(a) There is created the Arkansas State Board of Nursing, to be composed of thirteen (13) members to be appointed by the Governor for terms of four (4) years, subject to confirmation by the Senate.

(b)(1) Six (6) members shall be registered nurses whose highest level of educational preparation shall be as follows:

- (A) Two (2) diploma-school graduates;
- (B) Two (2) associate degree graduates; and
- (C) Two (2) baccalaureate degree or postbaccalaureate degree graduates.

(2) Each registered nurse member of the board shall have the following qualifications:

- (A) Be an Arkansas resident;
- (B) Have at least five (5) years of successful experience as a registered nurse in nursing practice, administration, or teaching;
- (C) Be licensed in Arkansas as a registered nurse; and
- (D) Have been employed as a registered nurse for at least three (3) years immediately preceding appointment, two (2) of which shall have been in Arkansas.

(c)(1) One (1) member shall be a licensed advanced practice registered nurse.

(2) The licensed advanced practice registered nurse board member shall have the following qualifications:

- (A) Be an Arkansas resident;
- (B) Have at least five (5) years of experience as an advanced practice registered nurse;
- (C) Be licensed in Arkansas as an advanced practice registered nurse;
- (D) Have been actively engaged in nursing for at least three (3) years immediately preceding appointment, two (2) of which shall have been in Arkansas; and
- (E) Have a certificate granting prescriptive authority.

(d)(1) Four (4) members shall be licensed practical nurses or licensed psychiatric technician nurses.

(2) Each licensed practical nurse board member or licensed psychiatric technician nurse board member shall have the following qualifications:

(A) Be an Arkansas resident;

(B) Have at least five (5) years of successful experience as a practical nurse or psychiatric technician nurse or as a teacher in an educational program to prepare practitioners of nursing;

(C) Be licensed in Arkansas as a licensed practical nurse or licensed psychiatric technician nurse; and

(D) Have been employed as a licensed practical nurse or as a licensed psychiatric technician nurse for at least three (3) years immediately preceding appointment, two (2) of which shall have been in Arkansas.

(e) One (1) member shall be a lay person representing consumers of health care services.

(f) One (1) member of the board shall not be actively engaged in or retired from the profession of nursing, shall be sixty (60) years of age or older, and shall be the representative of the elderly. This member shall be appointed from the state at large, subject to confirmation by the Senate, and shall be a full voting member but shall not participate in the grading of examinations.

(g) The consumer representative and the representative of the elderly positions may not be filled by the same person.

(h) No member shall be appointed to more than two (2) consecutive terms.

(i) Board members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(j) The terms of all registered nurse members and advanced practice registered nurse members shall be four (4) years.

History. Acts 1971, No. 432, §§ 3, 4; 1977, No. 113, §§ 1-3; 1979, No. 404, §§ 2, 3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1985, No. 189, § 1; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-747, 72-748; Acts

1995, No. 409, § 5; 1997, No. 250, § 159; 1999, No. 941, § 1; 2001, No. 149, §§ 1, 2; 2007, No. 205, § 1; 2013, No. 604, §§ 7, 8.

Amendments. The 2013 amendment inserted “registered” following “practice” throughout (c) and in (j).

17-87-203. Powers and duties.

The Arkansas State Board of Nursing shall have the following powers and responsibilities:

(1)(A) Promulgate whatever regulations it deems necessary for the implementation of this chapter.

(B) No regulation promulgated hereafter by the board shall be effective until reviewed by the Legislative Council and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof;

(2) Cause the prosecution of persons violating this chapter;

(3) Keep a record of all its proceedings;

- (4) Make an annual report to the Governor;
- (5) Employ personnel necessary for carrying out its functions;
- (6) Study, review, develop, and recommend role levels of technical classes of nursing service and practice to state and federal health agencies and to public and private administrative bodies;
- (7) Fix the time for holding its regular meetings;
- (8) Prescribe minimum standards and approve curricula for educational programs preparing persons for licensure as registered nurses, advanced practice registered nurses, registered nurse practitioner nurses, licensed practical nurses, and licensed psychiatric technician nurses;
- (9) Prescribe minimum standards and approve curricula for educational programs preparing persons for certification as medication assistive persons;
- (10) Provide for surveys of such programs at such times as it deems necessary or at the request of the schools;
- (11) Approve programs that meet the requirements of this chapter;
- (12) Deny or withdraw approval from educational programs for failure to meet prescribed standards;
- (13) Examine, certify, and renew the certification of qualified applicants for medication assistive persons;
- (14) Examine, license, and renew the licenses of qualified applicants for professional nursing, practical nursing, and psychiatric technician nursing;
- (15) License and renew the licenses of qualified applicants for registered nurse practitioner nursing and advanced practice nursing;
- (16) Grant certificates of prescriptive authority to qualified advanced practice registered nurses;
- (17) Convene an advisory committee as provided for in this chapter to assist with oversight of prescriptive authority;
- (18) Convene an advisory committee as provided for in this chapter to assist with oversight of medication assistive persons;
- (19) Establish the maximum number of medication assistive persons who may be supervised by a nurse; and
- (20) Conduct disciplinary proceedings as provided for in this chapter.

History. Acts 1971, No. 432, § 4; 1979, No. 404, § 3; A.S.A. 1947, § 72-748; Acts 1995, No. 409, § 6; 1997, No. 179, § 13; 2005, No. 1423, § 2; 2013, No. 604, §§ 9, 10.

Amendments. The 2013 amendment inserted “registered” following “practice” in (8) and (16).

17-87-205. Prescriptive Authority Advisory Committee.

- (a)(1) The Prescriptive Authority Advisory Committee is created as an advisory committee to the Arkansas State Board of Nursing.
- (2) The committee shall assist the board in implementing the provisions of this chapter regarding prescriptive authority.
- (b) The board shall appoint six (6) members, to be approved by the Governor, who have the following qualifications:

- (1) Four (4) members shall be advanced practice registered nurses at least three (3) of whom hold certificates of prescriptive authority and an active Drug Enforcement Administration number;
- (2) One (1) member shall be a licensed physician who has been involved in a collaborative practice with an advanced practice registered nurse for at least five (5) years; and
- (3) One (1) member shall be a licensed pharmacist who has been licensed for at least five (5) years.
- (c) Members shall serve three-year terms.
- (d) The board may remove any committee member, after notice and hearing, for incapacity, incompetence, neglect of duty, or malfeasance in office.
- (e) The members shall serve without compensation, but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1995, No. 409, § 7; 1997, No. 250, § 160; 2013, No. 604, § 11.

Amendments. The 2013 amendment substituted “six (6) members” for “five (5) members” in (b); rewrote (b)(1); substituted “an advanced practice registered nurse” for “a nurse practitioner” in (b)(2); and substituted “licensed” for “in practice” in (b)(3).

SUBCHAPTER 3 — LICENSING

SECTION.	SECTION.
17-87-302. Advanced practice registered nurses.	17-87-310. Prescriptive authority.
17-87-307. Temporary permits.	17-87-311. Direct reimbursement agreements.
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17-87-302. Advanced practice registered nurses.

- (a) **QUALIFICATIONS.** In order to be licensed as an advanced practice registered nurse, an applicant shall show evidence of education approved by the Arkansas State Board of Nursing, and national certification approved by the board under one (1) of the following roles of an advanced practice registered nurse:
- (1) **CERTIFIED NURSE PRACTITIONER.** A certified nurse practitioner shall hold current certification by a national certifying body recognized by the board in the advanced practice registered nurse role and population foci appropriate to educational preparation;
 - (2) **CERTIFIED REGISTERED NURSE ANESTHETIST.** To qualify as a certified registered nurse anesthetist, an applicant shall:
 - (A) Have earned a diploma or certificate evidencing satisfactory completion, beyond generic nursing preparation, of a formal educational program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs or another nationally recognized accrediting body and that has as its objective the preparation of nurses to perform as nurse anesthetists; and
 - (B) Hold current certification by a national certifying body recognized by the board in the advanced practice registered nurse role and population foci appropriate to educational preparation;

(3) **CERTIFIED NURSE MIDWIFE.** To qualify as a certified nurse midwife, an applicant shall:

(A) Hold current certification by a national certifying body recognized by the board in the advanced practice registered nurse role and population foci appropriate to educational preparation; and

(B) Have an agreement with a consulting physician if providing intrapartum care;

(4) **CLINICAL NURSE SPECIALIST.** In order to qualify as a clinical nurse specialist, an applicant shall:

(A) Hold a master's degree evidencing successful completion of a graduate program in nursing, which shall include supervised clinical practice and classroom instruction in a nursing specialty; and

(B) Hold current certification by a national certifying body recognized by the board in the advanced practice registered nurse role and population foci appropriate to educational preparation.

(b) **ISSUANCE OF LICENSE.** A license to practice as an advanced practice registered nurse may be issued:

(1) **BY APPLICATION.** Any person holding a license to practice as a registered nurse and meeting the educational qualifications and certification requirements to be licensed as an advanced practice registered nurse, upon application and payment of necessary fees to the board, may be licensed as an advanced practice registered nurse; and

(2) **BY ENDORSEMENT.** The board may issue a license to practice advanced practice registered nursing by endorsement to any applicant who has been licensed as an advanced practice registered nurse or to a person entitled to perform similar services under a different title under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the requirements for advanced practice registered nurses in this state.

(c) **TITLE AND ABBREVIATION.** Any person who holds a license to practice as an advanced practice registered nurse shall have the right to use the title of "advanced practice registered nurse" and the abbreviation "A.P.R.N.".

History. Acts 1971, No. 432, § 2; 1979, No. 404, §§ 1, 7; 1979, No. 613, § 2; 1980 (1st Ex. Sess.), No. 14, §§ 5, 6; 1981 (1st Ex. Sess.), No. 19, § 8; A.S.A. 1947, §§ 72-746, 72-756.1, 72-756.2; Acts 1995, No. 409, § 9; 1999, No. 1208, § 2; 2013, No. 604, § 12.

Amendments. The 2013 amendment rewrote this section.

17-87-307. Temporary permits.

(a)(1) Upon application and payment of the required fee, the Arkansas State Board of Nursing may issue a temporary permit to practice professional, practical, or psychiatric technician nursing to a qualified applicant who has:

(A) Completed a program in professional, practical, or psychiatric technician nursing approved by the appropriate state or national authorizing agency of this state or country and by the appropriate

authorizing agency of other states or territories or foreign countries; and

(B) Applied for or is awaiting results of the first examination he or she is eligible to take after the permit is issued.

(2) The permit shall become invalid upon notification to the applicant of the results of the first examination he or she is eligible to take after the permit is issued.

(b)(1) Upon application and payment of the required fee, the board shall issue a temporary permit to a qualified applicant holding a current professional, practical, or psychiatric technician license from another jurisdiction from any other state or territory awaiting endorsement.

(2) This permit must have an issuance date and an expiration date. The permit shall be valid for no more than six (6) months.

(c)(1) Upon application and payment of the required fee, an applicant shall be issued a temporary permit to practice advanced practice nursing who has:

(A) Satisfactorily completed an educational program for advanced practice nursing approved by the board; and

(B) Been accepted by the appropriate certification body to sit for the first national certification exam he or she is eligible to take.

(2) The permit shall expire upon notification to the applicant of the results of the examination.

(3) The permit is not renewable and does not apply to prescriptive authority.

(d)(1) Upon application and payment of the required fee, the board shall issue a temporary permit to a qualified applicant holding a current advanced practice registered nurse license or the equivalent from another jurisdiction from any other state or territory awaiting endorsement.

(2)(A) This permit must have an issuance date and a date when it shall become invalid.

(B) The permit shall automatically become invalid upon notification of the applicant's failure to pass the appropriate national certification exam.

(C) In no event shall the permit be valid in excess of six (6) months.

History. Acts 1971, No. 432, § 13; 1977, No. 88, § 1; 1979, No. 90, § 1; 1980 (1st Ex. Sess.), No. 14, § 2; 1981 (1st Ex. Sess.), No. 19, § 9; A.S.A. 1947, § 72-757; Acts 1995, No. 409, § 13; 2001, No. 303, § 1; 2013, No. 604, § 13.

Amendments. The 2013 amendment inserted "registered" following "practice" in (d)(1).

17-87-308. Renewal of licenses.

(a)(1) The Arkansas State Board of Nursing shall prescribe the procedure for the cyclical biennial renewal of licenses to every person licensed by the board.

(2) In each case, the board shall mail a notification for renewal to the licensee at least thirty (30) days prior to the expiration date of the license.

(b) Upon receipt of the application and the fee, the board shall verify the accuracy of the application and renew the license for a period to expire on the last day of the current biennial cycle.

(c) The renewal shall render the holder a legal practitioner of nursing for the period stated in subsection (b) of this section.

(d) Any licensee who allows his or her license to lapse by failing to renew the license as provided in this section may be reinstated by the board on payment of the renewal fee plus a penalty.

(e) Any person practicing nursing during the time his or her license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter.

(f)(1)(A) An individual may place his or her license on inactive status with written notification to the board.

(B) The holder of an inactive license shall not practice nursing in this state.

(2)(A) The provisions relating to the denial, suspension, and revocation of a license shall be applicable to an inactive or lapsed license.

(B) When proceedings to suspend or revoke an inactive license or otherwise discipline the holder of an inactive license have been initiated, the license shall not be reinstated until the proceedings have been completed.

(3) An inactive license may be placed in an active status upon compliance with the rules established by the board.

(g) As a condition of licensure renewal, an advanced practice registered nurse shall submit proof of current national certification and successful completion of continuing education as required by the board.

History. Acts 1971, No. 432, § 13; 1981 (1st Ex. Sess.), No. 19, § 9; A.S.A. 1947, § 72-757; Acts 1987, No. 147, § 1; 1995, No. 409, § 14; 1997, No. 179, § 14; 2005, No. 61, § 1; 2013, No. 604, § 14.

Amendments. The 2013 amendment inserted "registered" following "practice" in (g).

17-87-310. Prescriptive authority.

(a) The Arkansas State Board of Nursing may grant a certificate of prescriptive authority to an advanced practice registered nurse who:

(1) Submits proof of successful completion of a board-approved advanced pharmacology course that shall include preceptorial experience in the prescription of drugs, medicines, and therapeutic devices; and

(2) Has a collaborative practice agreement with a physician who is licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and who has a practice comparable in scope, specialty, or expertise to that of the advanced practice registered nurse on file with the Arkansas State Board of Nursing.

(b)(1) An advanced practice registered nurse with a certificate of prescriptive authority may receive and prescribe drugs, medicines, or therapeutic devices appropriate to the advanced practice registered nurse's area of practice in accordance with rules established by the Arkansas State Board of Nursing.

(2) An advanced practice registered nurse's prescriptive authority shall only extend to drugs listed in Schedules III — V.

(c) A collaborative practice agreement shall include, but not be limited to, provisions addressing:

(1) The availability of the collaborating physician for consultation or referral, or both;

(2) Methods of management of the collaborative practice, which shall include protocols for prescriptive authority;

(3) Coverage of the health care needs of a patient in the emergency absence of the advanced practice registered nurse or physician; and

(4) Quality assurance.

(d) If a collaborative practice results in complaints of violations of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., the Arkansas State Medical Board may review the role of the physician in the collaborative practice to determine if the physician is unable to manage his or her responsibilities under the agreement without an adverse effect on the quality of care of the patient.

(e) If a collaborative practice results in complaints of violations of this chapter, the Arkansas State Board of Nursing may review the role of the advanced practice registered nurse in the collaborative practice to determine if the nurse is unable to manage his or her responsibilities under the agreement without an adverse effect on the quality of care of the patient.

History. Acts 1995, No. 409, § 16; inserted "registered" following "practice" 2013, No. 604, § 15. throughout the section.

Amendments. The 2013 amendment

17-87-311. Direct reimbursement agreements.

(a) An advanced practice registered nurse or a registered nurse practitioner may enter into a direct reimbursement agreement with the agency administering the state medicaid program.

(b) The agency administering the state medicaid program shall not discriminate against practitioners providing covered services within the scope of their practice based on the type of practitioner.

History. Acts 1995, No. 409, § 17; inserted "registered" following "practice" 2013, No. 604, § 16. in (a).

Amendments. The 2013 amendment

17-87-312. Criminal background checks.

(a)(1) Each first-time applicant for a license issued by the Arkansas State Board of Nursing shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(2) At the time a person applies to an Arkansas nursing educational program, the program shall notify the applicant in writing of the provisions and requirements of this section.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (e) of this section.

(e) Except as provided in subdivision (1)(1) of this section, no person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or has been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;
- (9) Aggravated robbery as prohibited in § 5-12-103;
- (10) Battery in the first degree as prohibited in § 5-13-201;
- (11) Aggravated assault as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (14) Rape as prohibited in § 5-14-103;
- (15) Sexual indecency with a child as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
- (17) Incest as prohibited in § 5-26-202;
- (18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;

(19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;

(20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;

(21) Permitting abuse of a minor as prohibited in § 5-27-221(a);

(22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;

(23) Felony adult abuse as prohibited in § 5-28-103;

(24) Theft of property as prohibited in § 5-36-103;

(25) Theft by receiving as prohibited in § 5-36-106;

(26) Arson as prohibited in § 5-38-301;

(27) Burglary as prohibited in § 5-39-201;

(28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 — 5-64-442;

(29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;

(30) Stalking as prohibited in § 5-71-229;

(31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;

(32) Computer child pornography as prohibited in § 5-27-603; and

(33) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(f)(1)(A) The board may issue a nonrenewable temporary permit for licensure to a first-time applicant pending the results of the criminal background check.

(B) The permit shall be valid for no more than six (6) months.

(2) Except as provided in subdivision (1)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding the letter of provisional licensure has pleaded guilty or nolo contendere to, or has been found guilty of, any offense listed in subsection (e) of this section, the board shall immediately revoke the provisional license.

(g)(1) The provisions of subsection (e) and subdivision (f)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

- (D) Subsequent work history;
- (E) Employment references;
- (F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of the public.

(h)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by:

(A) The affected applicant for licensure or his or her authorized representative; or

(B) The person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(i) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(k) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(l)(1) For purposes of this section, an expunged record of a conviction or a plea of guilty or nolo contendere to an offense listed in subsection (e) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (l)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Kidnapping as prohibited in § 5-11-102;

(D) Rape as prohibited in § 5-14-103;

(E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;

(F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-206;

(G) Incest as prohibited in § 5-26-202;

(H) Arson as prohibited in § 5-38-301;

(I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and

(J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1999, No. 1208, § 4; 2001, No. 303, §§ 2-4; 2003, No. 103, §§ 1, 2; 2003, No. 1087, § 15; 2003, No. 1386, § 1; 2003, No. 1449, § 1; 2005, No. 1923, § 2; 2011, No. 570, § 121; 2013, No. 302, § 1.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The in-

tent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment, in (e)(28), inserted "the former" and "and §§ 5-64-419 — 5-64-442."

The 2013 amendment added (a)(2).

SUBCHAPTER 6 — NURSE LICENSURE COMPACT

SECTION.

17-87-601. Text of Compact.

17-87-601. Text of Compact.

The Interstate Nurse Licensure Compact is enacted into law and entered into by this state with all states legally joining therein and in the form substantially as follows:

NURSE LICENSURE COMPACT

ARTICLE I

Findings and Declaration of Purpose

(a) The party states find that:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's healthcare delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this Compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety;

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction;

(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the

patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

Definitions

As used in this Compact:

- (1) "Adverse action" means a home or remote state action;
- (2) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board;
- (3) "Coordinated Licensure Information System" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a non-profit organization composed of and controlled by state nurse licensing boards;
- (4) "Current significant investigative information" means:
 - (A) Investigative information that a licensing board after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
 - (B) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond;
- (5) "Home state" means the party state which is the nurse's primary state of residence;
- (6) "Home state action" means any administrative, civil, equitable or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice;
- (7) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses;
- (8) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice;
- (9) "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws;
- (10) "Party state" means any state that has adopted this Compact;
- (11) "Remote state" means a party state, other than the home state:
 - (A) Where the patient is located at the time nursing care is provided; or
 - (B) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located;

(12) "Remote state action" means:

(A) Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state; and

(B) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof;

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

(14) "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III

General Provisions and Jurisdiction

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their states and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) This Compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate

licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

Applications for Licensure in a Party State

(a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold licensure in only one (1) party state at a time, issued by the home state.

(c) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(d) When a nurse changes primary state of residence by:

(1) Moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(3) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V

Adverse Actions

In addition to the General Provisions described in Article III, the following provisions apply:

(1) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also

promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports;

(2) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action(s), and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions;

(3) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state;

(4) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action;

(5) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action; and

(6) Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI

Additional Authorities Invested in Party State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(1) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(2) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceed-

ings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located;

(3) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state; and

(4) Promulgate uniform rules and regulations as provided for in Article VIII(c).

ARTICLE VII

Coordinated Licensure Information System

(a) All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party states contributing that information, shall also be expunged from the coordinated licensure information system.

(g) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact.

ARTICLE VIII

Compact Administration and Interchange of Information

(a) The head of the nurse licensing board, or his/her designee, of each party state shall be the administrator of this Compact for his/her state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this Compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this Compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI.

ARTICLE IX

Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this Compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this Compact. Good faith in this article shall not include willful misconduct or gross negligence.

ARTICLE X

Entry into Force, Withdrawal and Amendment

(a) This Compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the Compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this Compact.

(d) This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI

Construction and Severability

(a) This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this Compact:

(1) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in the remote state(s) involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(2) The decision of a majority of the arbitrators shall be final and binding.

History. Acts 1999, No. 220, § 1; 2013, substituted “article VI(d)” for “Article VI” No. 1232, § 2.

Amendments. The 2013 amendment

in ARTICLE VIII (c).

CHAPTER 90 OPTOMETRISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
4. OPTOMETRIC DRUGS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-90-101. Definition — Applicability.

17-90-101. Definition — Applicability.

(a)(1) The “practice of optometry” means the examination, diagnosis, treatment, and management of conditions of the human eye, lid, adnexa, and visual system, including the removal of foreign bodies from the cornea, conjunctiva, lid, or adnexa but shall exclude other surgery

of the lid, adnexa, or visual system which requires anything other than a topical anesthetic.

(2) "Optometry" shall include utilizing any method or means which the licensed optometrist is educationally qualified to provide, as established and determined by the State Board of Optometry. In administering this chapter, the board shall by rule or regulation prescribe those acts, services, procedures, and practices which constitute both primary optometric eye care and the practice of optometry.

(3)(A) The "practice of optometry" shall include, but not be limited to, the prescribing and sale of eyeglasses and contact lenses, the prescribing and administering of all oral and topical drugs for the diagnosis or treatment only of conditions of the eye, lids, and adnexa, and the prescribing and administering of epinephrine, benadryl, or other comparable medication for the emergency treatment of anaphylaxis or anaphylactic reactions.

(B) All licensed optometrists are prohibited from using ophthalmic lasers for surgical procedures, performing cataract surgery, performing radial keratotomy surgery, and selling prescription drugs.

(C)(i) Optometrists are excluded from possessing, administering, or prescribing those pharmaceutical agents listed in Schedules I and II of the Uniform Controlled Substances Act, § 5-64-101 et seq., except hydrocodone combination drugs, regardless of their schedule, in combination with oral analgesic drugs.

(ii) A prescription written by an optometrist for hydrocodone combination drugs, regardless of their schedule, in combination with oral analgesic drugs, is limited to no more than seventy-two (72) hours and no authorized refills.

(b) Any person who utilizes any objective or subjective method, including, but not limited to, self-testing devices and computerized or automated refracting devices for the purpose of preparing an optical prescription, to analyze or determine any optical defect, deficiency, deformity, or visual or muscular anomaly of the visual system, who measures the curvature of the human cornea, who prescribes, tints, coats, dispenses, adapts, or duplicates lenses, prisms, ocular exercises, visual therapy, or orthoptics for the correction, relief, or aid of the visual functions, who prescribes, adapts, fits, duplicates, dispenses, modifies, sells, or supplies contact lenses, or who holds himself or herself out as being able to do so, shall be deemed to be engaged in the practice of optometry.

(c) Those licensed optometrists who meet the qualifications and standards established by the board shall be designated "optometric physicians".

(d) Nothing in this chapter shall apply to physicians and surgeons as defined in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(e) Nothing in this chapter shall prevent the performance of those acts, practices, and procedures, including the ordering, application, and sale of tints or coats for spectacle lenses, by legally qualified persons

who are specifically authorized and approved by the Ophthalmic Dispensing Act, § 17-89-101 et seq.

(f)(1) Every licensed optometrist shall within ten (10) days of receipt of written notification of the filing of a claim or lawsuit alleging malpractice against him or her notify the board by registered letter of the lawsuit and provide information or reports as required by the board.

(2) All information and reports shall be exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., and shall be released only upon the order of a court of competent jurisdiction.

History. Acts 1941, No. 94, § 1; 1979, No. 710, §§ 1, 3; 1981, No. 836, § 1; A.S.A. 1947, §§ 72-801, 72-801.1; Acts 1987, No. 101, §§ 1, 2; 1993, No. 176, § 1; 1997, No. 176, § 1; 1997, No. 186, § 1; 2013, No. 1361, § 1.

added subdivision designations to (a)(3); added (a)(3)(C); deleted “except those listed in Schedules I and II of the Uniform Controlled Substances Act, §§ 5-64-101—5-64-510” in (a)(3)(A); in (a)(3)(B), deleted “from” following “procedures,” “surgery,” and “and.”

Amendments. The 2013 amendment

SUBCHAPTER 4 — OPTOMETRIC DRUGS

SECTION.

17-90-403. Authority to possess, administer, and prescribe.

17-90-403. Authority to possess, administer, and prescribe.

(a) A person may possess, administer, and prescribe pharmaceutical agents for the diagnosis or treatment of conditions involving only the eye, lids, or adnexa if the person:

(1) Is engaged in the practice of optometry as defined in § 17-90-101;

(2) Has the education and professional competence as determined by the State Board of Optometry;

(3) Has satisfied the educational requirements established by the State Board of Optometry from a college or university accredited by a regional or professional accreditation organization that is recognized or approved by the Council for Higher Education Accreditation, the United States Department of Education, or the Arkansas Higher Education Coordinating Board; and

(4) Has met the requirements of § 17-90-401.

(b)(1) Optometrists shall not possess, administer, or prescribe the pharmaceutical agents listed in Schedules I and II of the Uniform Controlled Substances Act, § 5-64-101 et seq., except hydrocodone combination drugs, regardless of their schedule, in combination with oral analgesic drugs.

(2) A prescription written by an optometrist for hydrocodone combination drugs, regardless of their schedule, in combination with oral analgesic drugs, is limited to no more than seventy-two (72) hours and no authorized refills.

History. Acts 1941, No. 94, § 1; 1979, No. 710, § 1; 1981, No. 836, § 1; 1985, No. 875, § 1; A.S.A. 1947, § 72-801; Acts 1987, No. 101, § 1; 1997, No. 176, § 3; 1997, No. 186, § 3; 2013, No. 1361, § 2.

Amendments. The 2013 amendment rewrote this section.

CHAPTER 92

PHARMACISTS AND PHARMACIES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF PHARMACY.
3. LICENSED PHARMACISTS.
4. PHARMACIES.
5. GENERIC DRUGS AND PRICE LISTS.
12. ARKANSAS PHARMACY AUDIT BILL OF RIGHTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-92-101. Definitions.
 17-92-108. Fees.
 17-92-113. Preservation of professional responsibilities of pharmacist — Prohibitions.

SECTION.

- 17-92-114. Reciprocity.

17-92-101. Definitions.

As used in this chapter:

- (1) “Board” means the Arkansas State Board of Pharmacy;
- (2) “Credentialing” means the issuance of or approval by the Arkansas State Board of Pharmacy of a credential issued to a pharmacist by an agency approved by the board certifying that the pharmacist has met the standards of competency established by the Arkansas State Board of Pharmacy for disease state management or other pharmacy services necessitating a credential;
- (3) “Dentist” means a practitioner of dentistry duly licensed under the laws of this or some other state;
- (4)(A) “Disease state management” means a strategy that utilizes a team-oriented, multidisciplinary approach to improve health care outcomes and quality of care, and when possible, to control health care cost through management of targeted chronic disease states.
 (B) Disease state management focuses on improving health care from prevention to diagnosis and treatment to ongoing follow-up.
 (C) Disease state management will involve, but not be limited to, patient education, self-care techniques, and outpatient drug therapy management pursuant to a patient care plan;
- (5) “Drug” shall include all medicines and preparations recognized in the United States Pharmacopeia or the National Formulary as substances intended to be used for the care, mitigation, or prevention of disease of either man or other animals;

(6) "Generically equivalent" means a drug that is pharmaceutically and therapeutically equivalent to the drug prescribed;

(7) "Licensed pharmacist" means a person holding a license under the provisions of this chapter;

(8) "Medicine" means a drug or preparation of drugs in suitable form for use as a curative or remedial substance;

(9) "Optometrist" means a practitioner of optometry duly licensed under the laws of this state;

(10) "Patient care plan" means a written course of action that is patient- or physician- or pharmacist-specific and disease-specific for helping a patient to achieve outcomes that improve a patient's quality of life;

(11) "Pharmaceutically equivalent" means drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical, compendious, or other applicable standards of strength, quality, and purity according to the United States Pharmacopeia or another nationally recognized compendium;

(12) "Pharmacy" means the place licensed by the Arkansas State Board of Pharmacy in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail;

(13) "Pharmacy care" means the process by which a pharmacist in consultation with the prescribing practitioner identifies, resolves, and prevents potential and actual drug-related problems and optimizes patient therapy outcomes through the responsible provision of drug therapy or disease state management for the purpose of achieving any of the following definite outcomes that improve a patient's quality of life:

(A) Cure of disease;

(B) Elimination or reduction of a patient's symptomology;

(C) Arresting or slowing a disease process; or

(D) Preventing a disease or symptomology;

(14) "Physician" means a practitioner of medicine duly licensed under the laws of this or some other state;

(15) "Poisons" means any drug, chemical, medicine, or preparation liable to be destructive to adult human life in quantities of sixty (60) grains or less;

(16)(A) "Practice of pharmacy" means the learned profession of:

(i)(a) Dispensing, selling, distributing, transferring possession of, vending, bartering, or, in accordance with regulations adopted by the Arkansas State Board of Pharmacy, administering drugs, medicines, poisons, or chemicals that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription and order of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals.

(b) Except in accordance with regulations adopted by the Arkansas State Board of Pharmacy as recommended by the Medications Administration Advisory Committee, the administration of medications shall be limited to the following classifications of medications:

immunizations, vaccines, allergy medications, vitamins, minerals, antihyperglycemics, and antinausea medications.

(c) Influenza vaccines and influenza immunizations may be administered to a person seven (7) years of age and older under a general written protocol.

(d) Vaccines and immunizations other than influenza vaccines and influenza immunizations may be administered to a person from seven (7) years of age to eighteen (18) years of age under a patient-specific order or prescription and subject to reporting of the administration to the prescribing physician together with any reporting required under § 20-15-1203.

(e) Vaccines and immunizations other than influenza vaccines and influenza immunizations may be administered to a person eighteen (18) years of age or older under a general written protocol.

(f) Medications other than vaccines and immunizations may be administered to a person seven (7) years of age or older under a patient-specific order or prescription and subject to reporting of the administration to the prescribing physician.

(g) A general written protocol under subdivisions (16)(A)(i)(c) and (e) of this section and patient-specific orders or prescriptions under subdivisions (16)(A)(i)(d) and (f) of this section shall be from a physician licensed by the Arkansas State Medical Board and practicing in Arkansas or within fifty (50) miles of the Arkansas border;

(ii) Placing, packing, pouring, or putting into a container for dispensing, sale, distribution, transfer of, possession of, vending, or bartering any drug, medicine, poison, or chemical that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals;

(iii) Placing in or affixing upon any container described in subdivision (16)(A)(ii) of this section a label required to be placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

(iv) Preparing, typing, or writing labels to be placed in or affixed on any container described in subdivision (16)(A)(ii) of this section, which label is required to be placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

(v) Interpreting prescriptions for drugs, medicines, poisons, or chemicals issued by practitioners authorized by law to prescribe drugs, medicines, poisons, or chemicals that may be sold or dispensed only on prescription;

(vi) Selecting, taking from, and replacing upon shelves in the prescription department of a pharmacy or apothecary drugs, medicines, chemicals, or poisons that are required by the laws of the United States or the State of Arkansas to be sold or dispensed only on prescription of a practitioner authorized by law to prescribe them;

(vii) Compounding, mixing, preparing, or combining drugs, medicines, chemicals, or poisons that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe them;

(viii) Advising and providing information concerning utilization of drugs and devices and participation in drug utilization reviews;

(ix)(a) Performing a specific act of drug therapy management or disease state management delegated to a pharmacist for an individual patient based upon a written protocol or a patient care plan approved by a physician, who shall be licensed in this state under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(b) Drug therapy management shall not include the selection of drug products not prescribed by the physician unless the drug products are either named in the physician-initiated protocol or the physician-approved patient care plan;

(x) Providing pharmacy care; and

(xi) Providing pharmacokinetic services.

(B) The provisions of subdivisions (16)(A) and (16)(C) of this section shall not apply to employees of wholesale drug companies or other drug distributors who do not fill prescriptions or sell or dispense drugs to the consumer.

(C)(i) The Arkansas State Board of Pharmacy may permit pharmacy technicians other than pharmacists or interns to perform some or all of those functions described in board regulations under the direct, personal supervision of a licensed pharmacist pursuant to regulations defining the minimum qualifications of such employees, the ratio of pharmacy technicians to supervising pharmacists, and the scope of the duties, practices, and procedures that the Arkansas State Board of Pharmacy determines will promote the delivery of competent, professional pharmaceutical services and promote the public health and welfare. Nothing in this chapter shall be construed as allowing pharmacy technicians to administer medications.

(ii) The conduct of a pharmacy technician is the responsibility of the pharmacist-in-charge and supervising pharmacist of the pharmacy who shall not permit the employee to perform any act, task, or function that involves the exercise of independent judgment by the employee.

(iii) Pharmacy products prepared by pharmacy technicians shall be verified for accuracy by the supervising pharmacist prior to release for patient use, and the verification shall be documented.

(iv) The use of pharmacy technicians in a manner not authorized by this chapter or regulations promulgated hereunder shall be unprofessional conduct by the pharmacist-in-charge and the supervising pharmacist.

(v) It is recognized that hospital pharmacy technicians as defined in § 17-92-602(5) are governed by the Hospital Pharmacies Act, § 17-92-601 et seq., and related Arkansas State Board of Pharmacy regulations developed pursuant to that act;

(17)(A) "Prescription" means an order for medicine or medicines usually written as a formula by a physician, optometrist, dentist, veterinarian, or other licensed medicinal practitioner. It contains the names and quantities of the desired substance, with instructions to the pharmacist for its preparation and to the patient for the use of the medicine at a particular time and may authorize the pharmacist to substitute a therapeutically equivalent drug that is at a lower cost to the patient and communicate that authorization by any generally accepted means of communication of a prescription from a prescriber to a pharmacist.

(B) A substitution of a therapeutically equivalent drug shall occur only after the prescriber grants such authorization for each prescription.

(C)(i) Before dispensing, the pharmacist shall discuss verbally any suggested substitution with the patient and inform the patient that the patient has a right to refuse the substitution.

(ii) The discussion under subdivision (17)(C)(i) of this section shall include without limitation:

(a) Notification to the patient that the therapeutically equivalent drug does not contain the identical active ingredient present in the prescribed drug; and

(b) All differences in dosage and frequency between the prescribed drug and the therapeutically equivalent drug.

(D) The pharmacist shall send notice of the substitution to the prescriber in writing or by electronic communication within twenty-four (24) hours after the drug is dispensed to the patient.

(E) Subdivision (17)(B) of this section does not apply to specific acts of drug therapy management or disease state management delegated to a pharmacist based upon a written protocol or patient care plan approved by a physician under § 17-92-101(16)(A)(ix);

(18) "Proprietary medicines", when not otherwise limited, means remedies that a certain individual or individuals have the exclusive right to manufacture or sell;

(19) "Supervision" means under the direct charge or direction of and does not contemplate any continued absence of such supervision;

(20) "Therapeutic class" means a group of similar drug products that have the same or similar mechanisms of action and are used to treat a specific condition;

(21) "Therapeutically equivalent" means drug products from the same therapeutic class that if administered in appropriate amounts will provide the same therapeutic effect, identical in duration and intensity;

(22) "Veterinarian" means a practitioner of veterinary medicine duly licensed under the laws of this or some other state; and

(23) "Written protocol" means a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by regulation of the Arkansas State Medical Board under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1929, No. 72, § 1; Pope's Dig., § 4624; Acts 1955, No. 57, preliminary section; 1971, No. 26, §§ 1, 3; 1983, No. 511, §§ 2, 13; 1985, No. 616, § 2; A.S.A. 1947, §§ 72-1001, 72-1001.1, 72-1044, 72-1046; Acts 1987, No. 101, § 3; 1991, No. 740, § 1; 1997, No. 437, §§ 1, 2; 1997, No. 1204, §§ 1, 2; 1999, No. 105, §§ 1-5; 2001, No. 801, § 1; 2001, No. 910, § 1; 2003, No. 1473, § 34; 2009, No. 355, § 1; 2011, No. 147, § 1; 2013, No. 274, §§ 1, 2, 3; 2013, No. 536, § 1.

Amendments. The 2011 amendment rewrote (16)(A)(i)(c); inserted (16)(A)(i)(d) through (g); and deleted (22)(B).

The 2013 amendment by No. 274 inserted (20) and redesignated the remaining subdivisions accordingly; and rewrote (21).

The 2013 amendment by No. 536 rewrote (17).

17-92-108. Fees.

(a) The fees charged by the Arkansas State Board of Pharmacy for the various examinations, permits, licenses, certificates, credentials, and books issued by the board shall be as follows:

(1) The fee for examination for a license as a licensed pharmacist upon examination shall not exceed twenty-five dollars (\$25.00) plus the actual cost of the examination;

(2) The fee for a license as a licensed pharmacist from another state by reciprocity and without examination shall not exceed two hundred dollars (\$200);

(3)(A) The fee for the initial license as a licensed pharmacist shall not exceed seventy-five dollars (\$75.00).

(B) The fee for the renewal of a license as a licensed pharmacist shall not exceed seventy-five dollars (\$75.00) per year;

(4)(A)(i) The fee for issuance of a pharmacy permit for the first time to operate an in-state pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate an in-state pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in an in-state pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(B)(i) The fee for issuance of a permit for the first time to operate a specialty pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate a specialty pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in a specialty pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(C)(i) The fee for issuance of a permit for the first time to operate an out-of-state pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate an out-of-state pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in an out-of-state pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(5) The fee for a certificate as a licensed pharmacist shall not exceed ten dollars (\$10.00);

(6) The fee for certifying grades in connection with an application for reciprocity licensure without an examination shall not exceed ten dollars (\$10.00);

(7)(A) The fee for issuance of a hospital pharmaceutical service permit shall not exceed three hundred dollars (\$300), and the fee for the renewal of a hospital pharmaceutical service permit shall not exceed one hundred fifty dollars (\$150) per year.

(B) When there is a change in ownership of a hospital pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(C)(i) The fee for issuance of an ambulatory care center pharmaceutical service permit shall not exceed three hundred dollars (\$300), and the fee for the renewal of an ambulatory care center pharmaceutical service permit shall not exceed one hundred fifty dollars (\$150) per year.

(ii) When there is a change in ownership of an ambulatory care center pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(8)(A) The fee for issuance of an institutional pharmaceutical services permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the annual renewal of an institutional pharmaceutical services permit shall not exceed thirty-five dollars (\$35.00);

(9)(A) The fee for issuance of and the reinstatement of a nursing home consultant pharmacist permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the renewal of a nursing home consultant pharmacist permit shall not exceed thirty-five dollars (\$35.00) per year;

(10)(A) The fee for intern registration shall not exceed forty-five dollars (\$45.00).

(B) The fee for preceptor registration shall not exceed twenty dollars (\$20.00) every two (2) years;

(11) The fee for a change of pharmacist in charge of a pharmacy or other facility as described at § 17-92-403 shall not exceed thirty-five dollars (\$35.00);

(12) The fee for reinstatement of a pharmacist licensure shall not exceed seventy-five dollars (\$75.00) for each delinquent year up to a maximum of three hundred dollars (\$300);

(13) The fee for the Arkansas State Board of Pharmacy law book shall not exceed twenty-five dollars (\$25.00) except to interns on initial licensure and applicants for reciprocity on a one-time basis. A copy of each edition as revised shall be provided free to each pharmacy permit holder;

(14) The fee for a change of location inspection shall not exceed one hundred dollars (\$100);

(15) The penalty for late payment of renewal of any permit, license, registration, or certificate shall not exceed twenty dollars (\$20.00) per

month beginning the first day of the second month after expiration, provided that if the renewal is not paid by the first day of the fourth month after expiration, the license shall be void;

(16)(A) The fee for issuance of a wholesale distributor of legend drugs and controlled substances permit shall not exceed three hundred dollars (\$300), and the renewal fee shall not exceed one hundred fifty dollars (\$150) per year.

(B) When there is a change in ownership of a wholesale distributor of legend drugs and controlled substances, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(17)(A) The fee for the original issuance of a pharmacy technician's permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the renewal of a pharmacy technician's permit shall not exceed thirty-five dollars (\$35.00) per year.

(C) The board may waive the fees under subdivisions (a)(17)(A) and (B) of this section if the pharmacy technician performs pharmacy technician duties as a volunteer in a charitable clinic;

(18)(A) The reinstatement fee for a pharmacy technician's permit shall not exceed forty dollars (\$40.00).

(B) The board may waive the fee under subdivision (a)(18)(A) of this section if the pharmacy technician performs pharmacy technician duties as a volunteer in a charitable clinic; and

(19)(A) The application fee for a license to sell, rent, offer to sell, or rent directly to patients in this state any home medical equipment, legend drugs, or medical gases shall not exceed two hundred fifty dollars (\$250).

(B) The license renewal fee shall not exceed one hundred twenty-five dollars (\$125).

(C) The change-of-ownership fee shall not exceed one hundred twenty-five dollars (\$125).

(b) All fees for examination for a license shall be payable with the application and shall not be subject to refund.

(c) Should any license, certificate, or registration not be renewed within ninety (90) days after expiration thereof, it may be reinstated by the board as authorized in this section upon payment of the renewal fee and reinstatement fee. However, the following are not subject to reinstatement if not renewed within ninety (90) days after expiration:

- (1) Pharmacy permits;
- (2) Out-of-state pharmacy permits;
- (3) Speciality pharmacy permits;
- (4) Hospital permits;
- (5) Ambulatory care center pharmacy permits;
- (6) Wholesale distributors of legend drugs or controlled substance permits, or both; and

(7) Suppliers of medical equipment, legend devices, and medical gas licenses.

(d)(1) All retail pharmacy permits, out-of-state pharmacy permits, specialty pharmacy permits, and pharmacist licenses shall be renewed every two (2) years beginning with renewals for 2002-2003.

(2) All pharmacy technician permits, hospital pharmacy permits, ambulatory care center pharmaceutical services permits, wholesale distributors of legend or controlled substance permits, wholesale distributors of medical equipment, legend devices, and medical gases permits, institutional pharmaceutical services permits, and any other permit, license, registration, or certificate issued by the board and not covered in subdivision (d)(1) of this section other than internship licenses and preceptor permits shall be renewed every two (2) years.

(3) The fee for any biennial renewal term will be the amount of two (2) annual renewal fees for the applicable license, permit, registration, or certification as provided in subsection (a) of this section.

(4) If the initial licensure, permit, certificate, or registration occurs in the first year of a biennial renewal term, the applicant shall pay the appropriate initial fee and the applicable annual fee for the license, permit, certificate, or registration for the second year in the renewal term as provided in subsection (a) of this section.

(5) If the initial licensure, permit, certificate, or registration occurs in the second year of a biennial renewal term, the applicant will pay only the original fee and will not be responsible for the renewal fee until the biennial renewal period for the license, permit, certificate, or registration.

History. Acts 1965, No. 480, §§ 1, 2; 1975, No. 597, § 1; 1979, No. 751, § 1; 1983, No. 511, § 10; 1985, No. 616, § 3; A.S.A. 1947, §§ 72-1042, 72-1043; Acts 1991, No. 740, § 3; 1997, No. 1029, § 1; 1999, No. 105, § 6; 2001, No. 910, § 2; 2005, No. 388, § 1; 2007, No. 435, § 1; 2009, No. 355, § 2; 2011, No. 597, § 1.

Amendments. The 2011 amendment, in (d)(2), deleted “nursing home consultant pharmacist permits” following the second occurrence of “services permits,” “will be renewed for one (1) year for the 2002 renewal and” following “preceptor permits,” and “beginning with renewals for 2003-2004” at the end.

17-92-113. Preservation of professional responsibilities of pharmacist — Prohibitions.

(a) As used in this section:

(1) “Exercise of professional responsibilities” includes without limitation a pharmacist’s or pharmacy’s:

(A) Discussing any aspect of a patient’s medical condition, treatment alternatives, or plan options with the patient;

(B) In good faith communicating with or advocating on behalf of a patient concerning the patient’s needs; or

(C) Asserting rights under:

(i) The contract with the pharmacy benefits manager; or

(ii) State or federal law; and

(2) “Pharmacy benefits manager” means a nongovernmental entity that administers or manages a pharmacy benefits plan or program.

(b) A pharmacy benefits manager shall not interfere with the exercise of professional responsibilities to a patient by a pharmacist or a pharmacy.

History. Acts 2011, No. 1007, § 1.

17-92-114. Reciprocity.

The Arkansas State Board of Pharmacy may adopt rules applicable to a pharmacy or a pharmacist licensed in another state that renders services in Arkansas that mirror qualifications, requirements, prerogatives, prohibitions, and limitations imposed by the other state on Arkansas pharmacies and pharmacists rendering services in the other state.

History. Acts 2011, No. 1019, § 1.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF PHARMACY

SECTION.

17-92-201. Members — Qualifications.

17-92-201. Members — Qualifications.

(a) The Arkansas State Board of Pharmacy shall consist of eight (8) members, appointed by the Governor for terms of six (6) years:

(1) Five (5) members shall be experienced pharmacists who have been actively engaged in the practice of pharmacy for the last five (5) years immediately preceding their appointments, to be appointed upon the advice and recommendation of the Arkansas Pharmacists Association;

(2) One (1) member shall be a minority who is a licensed practicing pharmacist in this state, to be appointed by the Governor upon the advice and recommendation of the Pharmaceutical Section of the Arkansas Medical, Dental, and Pharmaceutical Association; and

(3)(A) Two (2) members of the board shall not be actively engaged in or retired from the practice of pharmacy. One (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly. Both shall be appointed from the state at large, subject to confirmation by the Senate. Both shall be full voting members but shall not participate in the grading of examinations.

(B) The two (2) positions shall not be held by the same person.

(b) A member shall hold his or her office until his or her successor shall have been appointed and qualified.

(c)(1) In case of a vacancy from death or other cause, the Governor shall appoint a successor with qualifications as set forth in subsection (a) of this section.

(2) In the event that a vacancy exists in the minority position due to death, resignation, or other cause, a successor member to the position

shall be appointed by the Governor for the remainder of the unexpired portion of the term in the same manner as is provided for the initial appointment.

(d) In order to appropriately stagger the terms of the pharmacist members, the term of the minority pharmacist member serving on January 1, 1999, is extended to eight (8) years. Thereafter, the term of the minority pharmacist member shall be six (6) years.

History. Acts 1891, No. 50, § 2, p. 80; C. & M. Dig., § 3668; Pope's Dig., § 4604; Acts 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-1002; Acts 1991, No. 1163, § 1; 1997, No. 942, § 1; 1999, No. 105, § 7; 2011, No. 839, § 1.

Amendments. The 2011 amendment, in (a)(1), substituted "practice of pharmacy" for "drug business" and added "to be appointed upon the advice and recommendation of the Arkansas Pharmacists Association"; and substituted "may" for "shall" in (a)(3)(B).

SUBCHAPTER 3 — LICENSED PHARMACISTS

SECTION.

17-92-310. Failure to renew.

17-92-311. Revocation, suspension, or nonrenewal — Grounds.

SECTION.

17-92-313. Revocation — Procedure.

17-92-310. Failure to renew.

(a)(1)(A) All retail pharmacy permits, out-of-state pharmacy permits, specialty pharmacy permits, nursing home consultant pharmacist permits, and pharmacist licenses shall expire on December 31 of the first odd-numbered year following the date of issuance.

(B) All preceptor permits shall expire on December 31 of the first odd-numbered year following the date of issuance.

(C)(i)(a) Intern licenses issued to foreign graduates shall expire on December 31 of the second calendar year following the date of issuance.

(b) However, an intern license issued to a foreign graduate shall expire when the intern is issued a pharmacist license.

(ii)(a) An intern license issued to a student intern shall remain valid as long as the intern maintains active student status in a college of pharmacy approved by the Arkansas State Board of Pharmacy and for six (6) months following graduation.

(b) An intern license issued to a student intern shall expire six (6) months following graduation.

(c) An intern license issued to a student intern may be reinstated if the intern resumes active student status in a board-approved college of pharmacy and applies for reinstatement.

(d) An intern license issued to a student intern shall expire when the intern is issued a pharmacist license.

(D) All pharmacy technician permits, hospital pharmacy permits, ambulatory care center pharmaceutical services permits, wholesale distributors of legend or controlled substance permits, wholesale

distributors of medical equipment, legend devices, and medical gases permits, institutional pharmaceutical services permits, List I chemical permits, and any other permit, license, registration, or certificate issued by the board and not covered in subdivisions (a)(1)(A)-(C) of this section shall expire on December 31 of the first even-numbered year following the date of the issuance of the permit, license, registration, or certificate.

(2) Every license, permit, registration, and certificate not renewed within ninety (90) days after expiration thereof shall be void.

(b) The penalty for late payment of renewal for pharmacists, pharmacies, wholesaler/manufacturer of legend drugs and controlled substances, hospital, institutional, and nursing home consultant permits shall be as listed in § 17-92-108, and if renewal remains unpaid on April 1 of any year, the license shall be void.

(c) If a pharmacist's license is not renewed by April 1, the fee for reinstatement shall be as stated in § 17-92-108.

(d) If a pharmacist's license has not been renewed for more than two (2) years, the board shall evaluate the former pharmacist to determine his or her continued ability to practice pharmacy safely with regard to the public health and safety, and the board shall establish conditions for the safe reentry into practice of the profession.

History. Acts 1955, No. 57, § 4; 1965, No. 480, § 1; 1975, No. 597, § 1; 1979, No. 751, § 1; 1985, No. 616, § 3; A.S.A. 1947, §§ 72-1010.1, 72-1042; Acts 1991, No. 740, § 11; 1997, No. 1029, § 4; 2005, No. 388, § 3; 2011, No. 597, § 2.

Amendments. The 2011 amendment

inserted "nursing home consultant pharmacist permits" in (a)(1)(A); substituted "December 31 of the first odd-numbered year" for "May 31 of the second calendar year" in (a)(1)(B); and deleted "nursing home consultant pharmacist permits" following "chemical permits" in (a)(1)(D).

17-92-311. Revocation, suspension, or nonrenewal — Grounds.

(a) The Arkansas State Board of Pharmacy may revoke or suspend an existing certificate of licensure, license, registration, or permit or may refuse to issue a certificate of licensure, license, registration, or permit if the holder or applicant, as the case may be, has committed or is found guilty by the board of any of the following acts or offenses set forth:

(1) The person is guilty of fraud, deceit, or misrepresentation in the practice of pharmacy;

(2) The person is unfit or incompetent to practice pharmacy by reason of negligent performance of his or her duties;

(3) The person has been found guilty or pleaded guilty or nolo contendere in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld by a court of this state, another state, or the federal government for:

(A) Any felony;

(B) Any act involving moral turpitude, gross immorality, or which is related to the qualifications, functions, and duties of a licensee; or

(C) Any violation of the pharmacy or drug laws or rules of this state, or of the pharmacy or drug statutes, rules, and regulations of any other state or of the federal government;

(4) The person has become physically or mentally incompetent to practice pharmacy to such an extent as to endanger the public;

(5) The person has directly or indirectly aided or abetted the practice of pharmacy by a person not authorized to practice pharmacy by the board;

(6) The person has been guilty of fraud or misrepresentation in obtaining a license to practice pharmacy in the State of Arkansas as a licensed pharmacist;

(7) The person has been guilty of gross unprofessional or dishonorable conduct;

(8) The person has willfully violated any of the provisions of the pharmacy laws of the State of Arkansas;

(9) The person is addicted to the use of intoxicating liquors or drugs to such a degree as to render him or her unfit, in the opinion of the board, to manufacture, compound, sell, or dispense drugs or medicine;

(10) The person knowingly adulterated or caused to be adulterated any drugs, chemical, or medical preparations and offered those preparations for sale; or

(11) The person had his or her certificate of licensure, license, registration, or permit revoked, suspended, or had other disciplinary action taken, or had his or her application for a certificate of licensure, license, registration, or permit refused, revoked, or suspended, or had voluntarily or otherwise surrendered his or her certificate of licensure, license, registration, or permit after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state.

(b) Nothing in this section should be construed as affecting the rights of any person to appeal any order of the board as now provided by the state pharmacy laws.

History. Acts 1963, No. 245, §§ 1, 2; A.S.A. 1947, §§ 72-1040, 72-1041; Acts 1991, No. 740, § 12; 2011, No. 597, § 3.

Amendments. The 2011 amendment, in (a), inserted “or suspend,” substituted “certificate of licensure, license, registration, or permit” for “license of a licensed pharmacist or may suspend the license or” and substituted “certificate of licensure, license, registration, or permit” for “li-

cence”; in (a)(3)(C), inserted “or rules” and deleted “or rules and regulations pertaining thereto” following “this state”; rewrote (a)(4); in (a)(11), substituted “certificate of licensure, license, registration, or permit” for “license to practice pharmacy” and “certificate of licensure, license, registration, or permit” for “license” twice; and made minor stylistic changes.

17-92-313. Revocation — Procedure.

(a)(1) Before revoking a certificate of licensure, license, registration, or permit, the Arkansas State Board of Pharmacy shall give the person ten (10) days’ notice in writing to appear before the board, at the time and place as the board may direct, to show cause why his or her certificate should not be revoked.

(2) The notice shall be signed by the Executive Director of the Arkansas State Board of Pharmacy or the director's designee and shall set forth in clear and concise language the nature of the charge against the person.

(3) Mailing a copy of the notice by registered mail, addressed to the person at his or her address appearing upon the records of the board concerning the issuance of his or her certificate or the last renewal thereof, shall be sufficient service of notice.

(b) At the hearing:

(1) The board shall have the power to subpoena witnesses;

(2) The executive director or the director's designee shall sign subpoenas;

(3) The President of the Arkansas State Board of Pharmacy shall have the power to administer oaths; and

(4) The board shall hear evidence.

(c) If the board finds after a hearing that the certificate of licensure, license, registration, or permit should be revoked, it shall be done immediately.

History. Acts 1939, No. 120, § 2; A.S.A. 1947, § 72-1028; Acts 1999, No. 105, §§ 8, 9; 2011, No. 597, §§ 4, 5.

Amendments. The 2011 amendment substituted "a certificate of licensure, license, registration, or permit" for "license

of any licensed pharmacist" in (a)(1); substituted "of licensure, license, registration, or permit" for "or license of the person" in (c); and made minor stylistic changes throughout.

SUBCHAPTER 4 — PHARMACIES

SECTION.

17-92-412. Nursing home consultant permit.

17-92-412. Nursing home consultant permit.

(a)(1) The Arkansas State Board of Pharmacy shall provide for the issuance of nursing home consultant permits by regulation.

(2) The consultant pharmacist-in-charge and the nursing home administrator shall be jointly responsible to ensure that a valid permit is posted at the facility at all times.

(b) The board shall set by regulation the standards by which the controlled and legend drugs and devices will be maintained in the nursing home or long-term care facility.

(c) The consultant pharmacist-in-charge, in conjunction with the nursing home administrator and director of nurses, shall ensure the proper control and accountability, storage, and proper utilization of drugs and other legend devices dispensed to patients residing in the facility according to board standards as well as those established by state and federal guidelines.

History. Acts 2001, No. 910, § 11; 2009, No. 355, § 6; 2011, No. 859, § 10.

Amendments. The 2011 amendment, in (a)(1), deleted "by regulation" following

"shall provide" and added "by regulation" following "permits."

SUBCHAPTER 5 — GENERIC DRUGS AND PRICE LISTS

SECTION.

17-92-507. Maximum Allowable Cost Lists.

17-92-507. Maximum Allowable Cost Lists.

(a) As used in this section:

(1) "Maximum Allowable Cost List" means a listing of drugs used by a pharmacy benefits manager setting the maximum allowable cost on which reimbursement to a pharmacy or pharmacist may be based;

(2) "Pharmacist" means a licensed pharmacist as defined in § 17-92-101;

(3) "Pharmacist services" means products, goods, or services provided as a part of the practice of pharmacy in Arkansas;

(4) "Pharmacy" means the same as in § 17-92-101;

(5) "Pharmacy benefits manager" means an entity that administers or manages a pharmacy benefits plan or program; and

(6) "Pharmacy benefits plan or program" means a plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services to individuals who reside in or are employed in this state.

(b) Before a pharmacy benefits manager places or continues a particular drug on a Maximum Allowable Cost List, the drug:

(1) Shall be listed as therapeutically equivalent and pharmaceutically equivalent "A" or "B" rated in the United States Food and Drug Administration's most recent version of the "Orange Book" or "Green Book" or has an NR or NA rating by Medi-span™ or a similar rating by a nationally recognized reference;

(2) Shall be available for purchase by each pharmacy in the state from national or regional wholesalers operating in Arkansas ; and

(3) Shall not be obsolete.

(c) A pharmacy benefits manager shall:

(1) Provide access to its Maximum Allowable Cost List to each pharmacy subject to the Maximum Allowable Cost List;

(2) Update its Maximum Allowable Cost List on a timely basis, but in no event longer than seven (7) calendar days from a change in the methodology on which the Maximum Allowable Cost List is based or in the value of a variable involved in the methodology;

(3) Provide a process for each pharmacy subject to the Maximum Allowable Cost List to receive prompt notification of an update to the Maximum Allowable Cost List; and

(4)(A) Within three (3) business days after the applicable fill date, provide a reasonable administrative appeal procedure to allow pharmacies to challenge maximum allowable costs for a specific drug or drugs as:

- (i) Not meeting the requirements of this section; or
- (ii) Being below the cost at which the pharmacy may obtain the drug.

(B) The pharmacy benefits manager shall respond to the challenge under subdivision (c)(4)(A)(i) of this section within seven (7) business days after receipt of the challenge.

(C) If a challenge is under subdivision (c)(4)(A)(i) of this section, the pharmacy benefits manager shall within seven (7) business days after receipt of the challenge either:

- (i) If the appeal is upheld:
 - (a) Make the change in the maximum allowable cost;
 - (b) Permit the challenging pharmacy or pharmacist to reverse and rebill the claim in question; and

- (c) Make the change under subdivision (c)(4)(C)(i)(a) of this section effective for each similarly situated pharmacy as defined by the payor subject to the Maximum Allowable Cost List; or

- (ii) If the appeal is denied, provide the challenging pharmacy or pharmacist the National Drug Code number from national or regional wholesalers operating in Arkansas.

(d) This section does not apply to a Maximum Allowable Cost List maintained by the Medicaid program.

(e) A violation of this section is a deceptive and unconscionable trade practice under § 4-88-101 et seq.

History. Acts 2013, No. 1194, § 1.

SUBCHAPTER 12 — ARKANSAS PHARMACY AUDIT BILL OF RIGHTS

SECTION.

17-92-1201. Arkansas Pharmacy Audit
Bill of Rights.

17-92-1201. Arkansas Pharmacy Audit Bill of Rights.

(a) This subchapter shall be known and may be cited as the “Arkansas Pharmacy Audit Bill of Rights”.

(b) Notwithstanding any other law, when an audit of the records of a pharmacy is conducted by a managed-care company, an insurance company, a third-party payor, or any entity that represents responsible parties such as companies or groups, the audit shall be conducted in accordance with the following bill of rights:

(1) The entity conducting the initial on-site audit shall give the pharmacy notice at least one (1) week before conducting the initial on-site audit for each audit cycle;

(2) Any audit that involves clinical or professional judgment shall be conducted by or in consultation with a pharmacist;

(3)(A)(i) Any clerical or recordkeeping error, such as a typographical error, scrivener’s error, or computer error, regarding a required document or record shall not in and of itself constitute fraud.

(ii) However, a claim arising under subdivision (b)(3)(A)(i) of this section may be subject to recoupment.

(B) A claim arising under subdivision (b)(3)(A)(i) of this section is not subject to criminal penalties without proof of intent to commit fraud;

(4) A pharmacy may use the records of a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug;

(5)(A) A finding of an overpayment or underpayment may be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs.

(B) However, recoupment of claims under subdivision (b)(5)(A) of this section shall be based on the actual overpayment unless the projection for overpayment or underpayment is part of a settlement by the pharmacy;

(6)(A) Where an audit is for a specifically identified problem that has been disclosed to the pharmacy, the audit shall be limited to claims that are identified by prescription number.

(B) For an audit other than described in subdivision (b)(6)(A) of this section, an audit shall be limited to twenty-five (25) prescriptions that have been randomly selected.

(C) If an audit reveals the necessity for a review of additional claims, the audit shall be conducted on site.

(D) Except for audits initiated under subdivision (b)(6)(A) of this section, an entity shall not initiate an audit of a pharmacy more than two (2) times in a calendar year;

(7)(A) A recoupment shall not be based on:

(i) Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the Arkansas State Board of Pharmacy; or

(ii)(a) A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the Arkansas State Board of Pharmacy.

(b) This subdivision (b)(7) applies only to audits of claims submitted for payment on or after January 1, 2012.

(B) Subdivisions (b)(7)(A)(i) and (ii) do not apply in cases of United States Food and Drug Administration regulation or drug manufacturer safety programs;

(8) Recoupment shall only occur following the correction of a claim and shall be limited to amounts paid in excess of amounts payable under the corrected claim;

(9) Except for Medicare claims, approval of drug, prescriber, or patient eligibility upon adjudication of a claim shall not be reversed unless the pharmacy or pharmacist obtained the adjudication by fraud or misrepresentation of claim elements;

(10) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(11) A pharmacy shall be allowed at least thirty (30) days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit;

(12) The period covered by an audit shall not exceed twenty-four (24) months from the date the claim was submitted to or adjudicated by a managed-care company, an insurance company, a third-party payor, or any entity that represents such companies or groups;

(13) Unless otherwise consented to by the pharmacy, an audit shall not be initiated or scheduled during the first seven (7) calendar days of any month due to the high volume of prescriptions filled during that time;

(14)(A) The preliminary audit report shall be delivered to the pharmacy within one hundred twenty (120) days after conclusion of the audit.

(B) A final audit report shall be delivered to the pharmacy within six (6) months after receipt of the preliminary audit report or the final appeal as provided for in subsection (c) of this section, whichever is later; and

(15) Notwithstanding any other provision in this subsection, the agency conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits.

(c) Recoupments of any disputed funds shall only occur after final internal disposition of the audit, including the appeals process as set forth in subsection (d) of this section.

(d)(1) Each entity conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity.

(2) If, following the appeal, the entity finds that an unfavorable audit report or any portion of the unfavorable audit report is unsubstantiated, the entity shall dismiss the audit report or the unsubstantiated portion of the audit report without any further proceedings.

(e) Each entity conducting an audit shall provide a copy of the final audit report to the plan sponsor after completion of any review process.

(f)(1) The full amount of any recoupment on an audit shall be refunded to the responsible party.

(2) Except as provided in subsection (f)(3) of this section, a charge or assessment for an audit shall not be based, directly or indirectly, on amounts recouped.

(3) Subsection (f)(2) does not prevent the entity conducting the audit from charging or assessing the responsible party, directly or indirectly, based on amounts recouped if both the following conditions are met:

(A) The responsible party and the entity have a contract that explicitly states the percentage charge or assessment to the responsible party; and

(B) A commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly on amounts recouped.

(g) This section does not apply to any audit, review, or investigation that involves alleged fraud, willful misrepresentation, or abuse, including without limitation:

- (1) Medicaid fraud as defined in § 5-55-111;
- (2) Abuse or fraud as defined in § 20-77-1702; or
- (3) Insurance fraud.

History. Acts 2007, No. 843, § 1; 2011, No. 517, §§ 1, 2.

Amendments. The 2011 amendment inserted "responsible parties" in (b); inserted present (b)(6) through (9) and re-

designated the remaining subdivisions accordingly; deleted former (b)(11)(A); added present (f); and redesignated former (f) as (g).

CHAPTER 93

PHYSICAL THERAPISTS

SUBCHAPTER.

2. ARKANSAS STATE BOARD OF PHYSICAL THERAPY.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF PHYSICAL THERAPY

SECTION.

17-93-203. Disposition of funds.

17-93-203. Disposition of funds.

(a)(1) All fees and other moneys received by the Arkansas State Board of Physical Therapy under this chapter shall be deposited into a financial institution in this state and expended solely for the purposes of this chapter.

(2) No part of these funds shall revert to the general funds of this state.

(b)(1) The compensation provided by this chapter and all expenses incurred under this chapter shall be paid from these funds.

(2) Compensation or expenses incurred under this chapter shall not be a charge against the general funds of this state.

(c) The board shall file an annual report of its activities with the Department of Finance and Administration, and the report shall include a statement of all receipts and disbursements.

History. Acts 1991, No. 1232, § 2; 2009, No. 1471, § 3; 2011, No. 859, § 11. in (b)(2), deleted "No compensation" at the beginning and inserted "not."

Amendments. The 2011 amendment,

SUBCHAPTER 3 — LICENSING

17-93-301. License required — Exceptions.

CASE NOTES

Preservation for Review.

Insurer's claim that the trial court gave two binding instructions to the jury that in effect directed the jury to rule in the insured's favor was improper because the insurer never presented arguments to the

trial court as to why Special Instruction No. 2 as a binding instruction and why this section should have been given to the jury. Thus, the argument was not preserved on appeal. *Allstate Ins. Co. v. Dodson*, 2011 Ark. 19, — S.W.3d — (2011).

CHAPTER 95

PHYSICIANS AND SURGEONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS MEDICAL PRACTICES ACT — GENERAL PROVISIONS.
3. ARKANSAS MEDICAL PRACTICES ACT — ARKANSAS STATE MEDICAL BOARD.
4. ARKANSAS MEDICAL PRACTICES ACT — LICENSING.
8. PHYSICIAN ASSISTANT COMMITTEE.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-95-102. Legend drugs.
17-95-107. Credentialing organization.

Effective Dates. Acts 2013, No. 1169, § 2: Apr. 12, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act regulates the dispensing of legend drugs; that physicians and patients require certainty about the prescriptive authority of physicians and the availability of legend drugs; that a delay between the passage of this act and the effectiveness of this act will create uncertainty about the prescriptive authority of physicians and the availability of legend

drugs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

17-95-102. Legend drugs.

(a) A dispensing physician is a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., who purchases legend drugs to be dispensed to his

or her patients for the patients' personal use and administration outside the physician's office.

(b) This section shall not apply to physicians who only dispense drugs in injectable form unless they are controlled substances, in which case the section shall fully apply.

(c) The dispensing physician shall:

(1) Personally dispense legend drugs, and the dispensing of such drugs may not be delegated;

(2) Keep records of all receipts and distributions of legend drugs. The records shall be subject to inspection by the proper enforcement authority and shall be readily accessible for inspection and maintained in a central registry; and

(3) Label legend drugs with the following information:

(A) Patient's name and address;

(B) Prescribing physician's address and narcotic registry number issued by the Drug Enforcement Administration of the United States Department of Justice;

(C) Date of dispensing; and

(D) Directions and cautionary statements, if any, as required by law.

(d)(1) A physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., shall not dispense legend drugs without prior approval by the Arkansas State Medical Board after application to the board and on the showing of need.

(2) Licensed physicians who were dispensing in the ordinary course of their practice before April 12, 2013, shall be exempt from the requirements of this subsection.

(3) The board shall determine whether need exists for a physician to dispense a specific legend drug to the physician's patient for a patient's personal use and administration outside of the physician's office based on such information as is necessary for the board to determine:

(A) The legend drug or drugs that the physician requests to dispense;

(B) The ability of a physician's patient to obtain the legend drug from other medical professionals;

(C) The availability of the legend drug to be prescribed by the physician;

(D) The hours at which the legend drug may be obtained from other medical professionals;

(E) The distance the physician's patient must travel to obtain the legend drug from other medical professionals;

(F) Whether the physician has been investigated by the board concerning the improper prescribing or use of a legend drug;

(G) Whether the physician has a financial relationship with the manufacturer of a legend drug that would create the appearance of a conflict of interest;

(H) Whether the physician dispensing a legend drug will foster cost containment through improved efficiency and productivity; and

(I) The procedures the physician has implemented to:

- (i) Assure compliance with the requirements of subsection (c) of this section;
 - (ii) Monitor and guard against potential drug interactions;
 - (iii) Store and safeguard the legend drugs; and
 - (iv) Comply with § 20-7-601 et seq. concerning the reporting requirements to the Prescription Drug Monitoring Program.
- (4) A prescription for a topical medication is exempt from subdivision (d)(3) of this section.
- (e) The board shall enforce the provisions of this section and is authorized and directed to adopt regulations to carry out its purpose.

History. Acts 1983, No. 515, §§ 1-4; **Amendments.** The 2013 amendment A.S.A. 1947, §§ 72-638 — 72-641; Acts 1987, No. 190, § 1; 2013, No. 1169, § 1. rewrote (d).

17-95-107. Credentialing organization.

(a) The purpose of this section is to allow the Arkansas State Medical Board to provide information to credentialing organizations.

(b) As used in this section:

(1) “Accrediting organization” means an organization that awards accreditation or certification to hospitals, managed care organizations, or other health care organizations, including, but not limited to, the Joint Commission on the Accreditation of Healthcare Organizations and the National Committee for Quality Assurance;

(2) “Board” means the Arkansas State Medical Board;

(3) “Credentialing information” means:

(A) Information regarding a physician’s:

- (i) Professional training, qualifications, background, practice history, and experience, for example, status of medical license;
- (ii) Clinical hospital privileges;
- (iii) Status of Drug Enforcement Administration certificate;
- (iv) Education, training, and board certification;
- (v) Work history;
- (vi) Current malpractice coverage;
- (vii) History of professional liability or malpractice claims;
- (viii) Drug or alcohol abuse to the extent permitted by law;
- (ix) History of board appearances;
- (x) Loss, surrender, restriction, or suspension of license;
- (xi) Felony convictions;
- (xii) History of loss or limitation of privileges or disciplinary activity;

(xiii) Attestation of the correctness and completeness of the application; and

(xiv) History of Medicare or Medicaid or other sanctions; and

(B) Other objective information typically required by accrediting organizations for the purpose of credentialing physicians;

(4) "Credentialing organization" means a hospital, clinic, or other health care organization, managed care organization, insurer, or health maintenance organization; and

(5) "Primary source verification procedure" means the procedure used by a credentialing organization to test the accuracy of documents and credentialing information submitted to it by or about a physician who is applying for affiliation or participation with the credentialing organization. This procedure involves the verification of credentials with the originating source of the credentials.

(c)(1) All physicians licensed by the board shall submit such credentialing information as the board may request so that the board may verify the information by the primary source verification procedure in order to make the information available to credentialing organizations. If the physician should fail to submit the information as the board requests within a period of thirty (30) days, the failure can result in the suspension of the physician's license to practice medicine in the State of Arkansas after the matter is presented to the full board for a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) Any credentialing organization shall submit such credentialing information as it has in its possession to the board in order to complete the primary source verification procedure, upon the board's request and upon the board's providing proof that the physician has authorized the release of the information. The failure of the organization to release the information to the board shall be grounds to have the license to do business in the State of Arkansas suspended upon the board's presenting the proof to the licensing agency of that organization.

(3) Credentialing organizations may utilize credentialing information provided by the board and verified by the primary source verification procedure of the board to evaluate the following:

(A) Granting or denying the application of a physician for affiliation or participation within the organization or its networks;

(B) The quality of services provided by a physician or the physician's competency or qualifications;

(C) Renewal of the affiliation or participation of the physician; and

(D) The type, extent, or conditions of the physician's privileges or participation in the network.

(d)(1)(A) The board shall provide to any credentialing organization any credentialing information the board collects concerning any person licensed by the board if the person authorizes release of the information.

(B) The board shall provide the information within fifteen (15) business days after receipt of the request.

(C) If any person fails or refuses for any reason to authorize release of credentialing information, the requesting credentialing organization shall be entitled on grounds of the refusal to exclude the person from any privileges, contract, or network of the credentialing organization.

(2)(A) The board shall promulgate regulations establishing a credentialing information system, and the regulations shall indicate the procedures for collection and release of credentialing information under this section.

(B) The regulations shall require that before July 1, 2003, the process of recredentialing a physician shall be completed within thirty (30) business days unless circumstances beyond the control of the board make completion of the process within thirty (30) business days impossible or unduly burdensome.

(C) If the credentialing process is not completed within the required time and the board does not provide an adequate explanation for failing to meet the time requirement, the fee for the credentialing process shall be refunded to the credentialing organization, hospital, or other qualified recipient of the fee.

(D) If disagreements arise over a claim that circumstances have made timely completion impossible or unduly burdensome, the disagreement shall be presented to the advisory committee established under subdivision (d)(3) of this section for a recommendation to the board on whether or not to refund the fee and in what amount so that the board may issue an order to refund the fee or deny the request after consideration by the board.

(3) The board shall appoint a ten-member advisory committee to assist with the adoption of policies and regulations concerning the credentialing information system. At least six (6) of the ten (10) members of the advisory committee shall be representative of credentialing organizations subject to this section, including not fewer than two (2) hospital representatives and not fewer than two (2) insurer or health maintenance organization representatives.

(4) Credentialing information shall not be disclosed to any parties other than the applicable health care provider and the credentialing organization and its designated credentialing and appeals, peer review, and quality improvement committees or bodies. Except as permitted in this section, credentialing information shall not be used for any purpose other than review by the board and credentialing organizations of the professional background, competency, qualifications, and credentials or renewal of credentials of a health care provider or appeals therefrom, and all such credentialing information shall be exempt from disclosure under the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq. Credentialing information may be disclosed in the following circumstances:

(A) By the board in disciplinary hearings before the board or in any trial or appeal of the board action or order;

(B) By the board or credentialing organization to any licensing, regulatory, or disciplinary authorities or agencies of the United States or of other states or jurisdictions; and

(C) In any legal or regulatory proceeding that:

(i) Is brought by a:

(a) Health care provider;

(b) Representative of the health care provider or a class thereof;
(c) Local, state, or federal agency or authority; or
(d) Patient or group or class of patients or their authorized representatives or agents; and

(ii) Challenges the actions, omissions, or conduct of the credentialing organization with respect to credentialing of any health care provider or the grant or denial of any affiliation or participation of the health care provider with or in the credentialing organization or any network thereof; or

(D) By any party when authorized to do so by the health care provider to whom the credentialing information relates.

(5) The evaluation and discussion of credentialing information by a credentialing organization shall not be subject to discovery or admissible pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq.

(6) The board may enter into contractual agreements with users of the credentialing information system to define the type and form of information to be provided and to give users assurances of the integrity of the information collected.

(7)(A) The board may charge credentialing organizations a reasonable fee for the use of the credentialing service as established by rule and regulation.

(B) The fee shall be set in consultation with the advisory committee and shall be set at such a rate as will reimburse the board, when added to the credentialing assessments collected from physicians, for the cost of maintaining the credentialing information system.

(C) A credentialing organization shall not charge or seek payment of the fee from a physician licensee.

(D) The board's costs may not exceed the fees charged by private vendors with a comparable statewide credentialing service.

(E) The board may assess each physician licensee an amount not to exceed one hundred dollars (\$100) per year to offset the cost of providing the credentialing service.

(e)(1)(A) In lieu of testing credentialing information by its own primary source verification procedure, a credentialing organization may rely upon credentialing information from the board if the board certifies that the information provided by the board has been tested by the board's primary source verification procedure.

(B) The credentialing organization shall be immune from civil suit based on any allegation of wrongdoing or negligence involved in the collection and verification of or reliance upon credentialing information on a health care provider if the credentialing organization has utilized the information provided by the board in credentialing a health care provider for affiliation or participation with the credentialing organization. However, this does not convey immunity from civil suit to a credentialing organization for any credentialing decision it makes.

(2) Subject only to the exceptions recognized in subdivisions (f)(1) and (2) of this section, a credentialing organization shall be precluded

hereby from seeking credentialing information from the physician or from sources other than the board if:

(A) The same credentialing information is available from the board; and

(B) At the time the credentialing information is requested, the board:

(i) Holds certification by the National Committee for Quality Assurance as a certified credentials verification organization;

(ii) Demonstrates compliance with the principles for credentials verification organizations set forth by the Joint Commission on the Accreditation of Healthcare Organizations;

(iii) Documents compliance with Department of Health rules and regulations applicable to credentialing; and

(iv) Maintains evidence of compliance with the standards referenced in subdivisions (e)(2)(B)(i)-(iii) of this section; and

(C) The board charges fees that comply with subdivision (d)(7) of this section. Until such time as the board satisfies each of the foregoing prerequisites, credentialing organizations, in their discretion, may utilize credentialing information obtained from the board, or they may seek other sources for the same credentialing information. If at any time the board fails to satisfy any of the certification or compliance standards referenced in this subsection, no credentialing organization shall be required to utilize the board to obtain credentialing information during any period in which the board lacks such accreditation or compliance.

(f)(1) Credentialing organizations that utilize the credentialing information system offered by the board shall not attempt to collect duplicate information from individual physicians or originating sources, but nothing in this section shall prevent any credentialing organization from collecting or inquiring about any data not available from or through the board, nor from reporting to or inquiring of the National Practitioner Data Bank.

(2) The board may seek an injunction against any credentialing organization violating or attempting to violate this section and, upon prevailing, shall be entitled to recover attorney's fees and court costs involved in obtaining the injunction.

(g) The board will have the authority to hire such employees and enter into contracts with attorneys, individuals, or corporations for services as may be necessary to bring about the purpose of this section.

(h) [Repealed.]

History. Acts 1999, No. 1410, § 2; 2003, No. 1360, §§ 1-3; 2005, No. 1962, § 76; 2011, No. 999, § 1; 2013, No. 1035, § 2.

Amendments. The 2011 amendment deleted (h).

The 2013 amendment inserted (d)(7)(C) and redesignated the remaining subdivisions accordingly.

SUBCHAPTER 2 — ARKANSAS MEDICAL PRACTICES ACT — GENERAL PROVISIONS

SECTION.	SECTION.
17-95-202. Definitions.	17-95-210. Use of credentialing information.
17-95-209. Regulation of office-based surgery.	

17-95-202. Definitions.

As used in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.:

- (1) “Active” means actively engaged in the full-time practice of medicine;
- (2) “Board” means the Arkansas State Medical Board;
- (3) “Practice of medicine” means:
 - (A) Holding out one’s self to the public within this state as being able to diagnose, treat, prescribe for, palliate, or prevent any human disease, ailment, injury, deformity, or physical or mental condition, whether by the use of drugs, surgery, manipulation, electricity, or any physical, mechanical, or other means whatsoever;
 - (B) Suggesting, recommending, prescribing, or administering any form of treatment, operation, or healing for the intended palliation, relief, or cure of any physical or mental disease, ailment, injury, condition, or defect of any person with the intention of receiving, either directly or indirectly, any fee, gift, or compensation whatsoever;
 - (C) Maintaining an office or other place to meet persons for the purpose of examining or treating persons afflicted with disease, injury, or defect of body or mind;
 - (D) Using the title “M.D.”, “M.B.”, “D.O.”, “physician”, “surgeon”, or any other word or abbreviation to indicate or induce others to believe that one is engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind, except as otherwise expressly permitted by the laws of this state relating to the practice of any limited field of the healing arts;
 - (E) Performing any kind of surgical operation upon a human being; or
 - (F) Delegating certain medical practices to other personnel under rules adopted by the board; and
- (4) “Office-based surgery” means surgery that:
 - (A) Is performed by a physician in a medical office that is not a hospital, outpatient clinic, or other facility licensed by the State Board of Health;
 - (B) Requires the use of general or intravenous anesthetics; and
 - (C) In the opinion of the physician, does not require hospitalization.

History. Acts 1957, No. 198, §§ 2, 4; 1971, No. 53, § 1; A.S.A. 1947, §§ 72-603, 72-604; Acts 2001, No. 464, § 1; 2005, No. 2010, § 1; 2007, No. 827, § 137; 2009, No. 472, § 1; 2013, No. 587, § 1.

Amendments. The 2013 amendment added (4).

17-95-209. Regulation of office-based surgery.

Within eighteen (18) months after August 16, 2013, the Arkansas State Medical Board shall adopt rules to be followed by a physician who performs office-based surgery.

History. Acts 2013, No. 587, § 2.

17-95-210. Use of credentialing information.

(a) The purpose of this section is to allow the Arkansas State Medical Board to provide information to credentialing organizations.

(b) For purposes of this section:

(1) "Credentialing information" means:

(A) Information regarding a physician assistant's, a radiology assistant's, a radiology practitioner assistant's, an occupational therapist's, an occupational therapy assistant's, or a respiratory care practitioner's:

(i) Attestation of the correctness and completeness of an application under this section;

(ii) Clinical hospital privileges;

(iii) Current malpractice coverage;

(iv) Drug or alcohol abuse to the extent permitted by law;

(v) Education, training, and board certification;

(vi) Felony convictions;

(vii) History of appearances before the board;

(viii) History of loss or limitation of privileges or disciplinary activity;

(ix) History of Medicare or Medicaid sanctions or other sanctions;

(x) History of professional liability or malpractice claims;

(xi) Loss, surrender, restriction, or suspension of license;

(xii) Professional training, qualifications, background, practice history, experience, and status of medical license;

(xiii) Status of Drug Enforcement Administration certificate; and

(xiv) Work history; and

(B) Other objective information typically required by accrediting organizations for the purpose of credentialing health care professionals, radiology assistants, radiology practitioner assistants, occupational therapists, occupational therapy assistants, or respiratory care practitioners; and

(2) "Credentialing organization" means:

(A) A clinic;

(B) A hospital;

(C) A health maintenance organization;

(D) An insurer;

(E) A managed care organization; and

(F) Another health care organization.

(c) A credentialing organization may utilize credentialing information provided by the board to evaluate:

(1) Granting or denying the application of a physician assistant, a radiology assistant, a radiology practitioner assistant, an occupational therapist, an occupational therapy assistant, or a respiratory care practitioner for affiliation or participation within the organization or its networks;

(2) The quality of services provided by a physician assistant, a radiology assistant, a radiology practitioner assistant, an occupational therapist, an occupational therapy assistant, or a respiratory care practitioner or the physician assistant's, the radiology assistant's, the radiology practitioner assistant's, the occupational therapist's, the occupational therapy assistant's, or the respiratory care practitioner's competency or qualifications;

(3) Renewal of the affiliation or participation of a physician assistant, a radiology assistant, a radiology practitioner assistant, an occupational therapist, an occupational therapy assistant, or a respiratory care practitioner; and

(4) The type, extent, or conditions of the physician assistant's, the radiology assistant's, the radiology practitioner assistant's, the occupational therapist's, the occupational therapy assistant's, or the respiratory care practitioner's privileges or participation in the network.

(d)(1) The board shall provide to a credentialing organization any credentialing information the board collects concerning a person licensed by the board, if the person authorizes release of the information.

(2) If a person fails or refuses to authorize release of credentialing information under this section, the requesting credentialing organization is entitled, on grounds of the failure or refusal, to exclude the person from a privilege, contract, or network of the credentialing organization.

(e) This section applies to the following individuals and health practitioners that are licensed by the Arkansas State Medical Board:

(1) Occupational therapists and occupational therapy assistants, licensed under the Arkansas Occupational Therapy Practice Act, § 17-88-101 et seq.;

(2) Physician assistants, licensed under § 17-105-101 et seq.;

(3) Radiology assistants and radiology practitioner assistants licensed under § 17-106-201 et seq.; and

(4) Respiratory care practitioners licensed under the Arkansas Respiratory Care Act, § 17-99-101 et seq.

(f)(1) The board shall adopt rules establishing and describing the procedures for collection and release of information under this section.

(2) The board shall adopt policies and rules after seeking the advice from the following committees:

(A) The Arkansas State Occupational Therapy Examining Committee established under § 17-88-201 et seq.;

(B) The Arkansas State Respiratory Care Examining Committee established under § 17-99-203 et seq.; and

(C) The physician assistant advisory committee established under § 17-105-117.

(g)(1) The board may charge a credentialing organization a reasonable fee for the use of the credentialing service established under this section.

(2) The fee shall be set after receiving advice from the physician assistant advisory committee and shall be set at a rate to reimburse the board for the cost of administering this section.

(h) The board shall adopt rules establishing a credentialing information system, and the rules shall indicate the procedures for collection and release of credentialing information under this section.

(i)(1) The board shall not disclose credentialing information to a party other than the applicable health care provider and the credentialing organization and its designated credentialing and appeals, peer review, and quality improvement committee or body.

(2) Except as permitted in this section, credentialing information shall not be used for a purpose other than review by the board and a credentialing organization of the professional background, competency, qualifications, and credentials or renewal of credentials of a health care provider or appeals of a review by the board or a credentialing agency.

(3) Credentialing information is exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(4) Credentialing information may be disclosed:

(A) By the board in a disciplinary hearing before the board or in a trial or appeal of a board action or order;

(B) By the board or a credentialing organization to a licensing, regulatory, or disciplinary authority or agencies of the United States, another state, or jurisdiction;

(C) In a legal or regulatory proceeding that:

(i) Is brought by a health care provider, a representative of the health care provider or a class health care provider, a local, state, or federal agency or authority, or a patient or group or class of patients or an authorized representative or agent of a patient or group or class of patients; and

(ii) Challenges the actions, omissions, or conduct of the credentialing organization with respect to credentialing of a health care provider or the grant or denial of an affiliation or participation of the health care provider with or in the credentialing organization or a network of the credentialing organization; or

(D) By a party when the party is authorized to disclose credentialing information by the health care provider to whom the credentialing information relates.

(5) The evaluation and discussion of credentialing information by a credentialing organization is not subject to discovery and is not admissible under the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq.

(6) The board may enter into a contractual agreement with a user of the credentialing information system to define the type and form of information to be provided and to give a user assurances of the integrity of the information collected.

(7) The board may hire employees, enter into contracts with attorneys, individuals, or corporations for services necessary to implement this section.

History. Acts 2013, No. 1035, § 1.

SUBCHAPTER 3 — ARKANSAS MEDICAL PRACTICES ACT — ARKANSAS STATE MEDICAL BOARD

SECTION.

17-95-303. Powers and duties.

17-95-303. Powers and duties.

The Arkansas State Medical Board shall:

(1) Make and adopt all rules, regulations, and bylaws not inconsistent with the laws of this state or of the United States and necessary or convenient to perform the duties and to transact the business required by law;

(2) Have authority to promulgate and put into effect such rules and regulations as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein;

(3)(A)(i) Have authority to employ attorneys to represent the board in all legal matters at a compensation approved by the board.

(ii) Contracts for employment of attorneys shall be filed by the Executive Secretary of the Arkansas State Medical Board with the Legislative Council.

(B) The board shall further have authority to request the assistance of the Attorney General and the prosecuting attorneys of Arkansas in such manner as it deems necessary and proper;

(4) Have the authority to employ an executive secretary to carry out the purposes and the mandates of the board and to supervise the other employees of the board;

(5) Have the authority to employ a medical director, who shall hold a valid license to practice medicine in this state, to evaluate medical issues and to assist in investigations pending before the board;

(6) Have the power and authority to employ such secretarial and administrative assistance as may be necessary to carry out the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the duties of the board to protect the people of the State of Arkansas;

(7) Have the power and authority to employ one (1) or more inspectors as may be necessary to carry out the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and

§ 17-95-401 et seq., and the duties of the board to protect the people of the State of Arkansas;

(8) Examine, as is provided for by law, all applicants for a license to practice medicine in this state;

(9) Consider and give deference to data, studies, consensus documents, and conclusions issued by the Centers for Disease Control and Prevention or the National Institutes of Health whenever their data, studies, consensus documents, and conclusions are relevant to any decision made pursuant to the board's powers and duties under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.; and

(10) Have the power and authority to collect practice data from licensees.

History. Acts 1955, No. 65, § 2; 1957, No. 198, § 18; 1977, No. 15, § 4; 1979, No. 150, § 1; 1983, No. 365, § 5; A.S.A. 1947, §§ 72-602, 72-618; Acts 1992 (1st Ex.

Sess.), No. 38, § 2; 2001, No. 464, § 4; 2003, No. 1716, § 1; 2011, No. 1010, § 1.

Amendments. The 2011 amendment added (10).

17-95-310. Medical Director of Arkansas State Medical Board — Qualifications.

A.C.R.C. Notes. Acts 2011, No. 1062, § 5, provided: “DIRECTOR QUALIFICATIONS AND LIMITATIONS. The Director of the State Medical Board shall:

“(a) have been in full-time clinical practice of medicine in direct patient care within one (1) year of filling the position of Medical Director;

“(b) have fifteen (15) years of current continuous full-time medical service immediately prior to the date of appointment which shall include, but not be limited to, at least ten (10) years of full-time clinical practice in direct patient care, five (5) years of which shall have been in full-time clinical practice in direct patient care in the State of Arkansas;

“(c) have not served on the Arkansas State Medical Board within the past five (5) years; and

“(d) have a comprehensive knowledge of the contemporary, broad-based clinical practice of medicine with experience in direct patient care.”

Acts 2012, No. 85, § 5, provided: “DIRECTOR QUALIFICATIONS AND LIMITATIONS. The Director of the State Medical Board shall:

“(a) have been in full-time clinical practice of medicine in direct patient care within one (1) year of filling the position of Medical Director;

“(b) have fifteen (15) years of current continuous full-time medical service immediately prior to the date of appointment which shall include, but not be limited to, at least ten (10) years of full-time clinical practice in direct patient care, five (5) years of which shall have been in full-time clinical practice in direct patient care in the State of Arkansas;

“(c) have not served on the Arkansas State Medical Board within the past five (5) years; and

“(d) have a comprehensive knowledge of the contemporary, broad-based clinical practice of medicine with experience in direct patient care.”

SUBCHAPTER 4 — ARKANSAS MEDICAL PRACTICES ACT — LICENSING

SECTION.

17-95-403. Application — Qualifications.

17-95-403. Application — Qualifications.

(a)(1) Every person desiring a license to practice medicine shall make application to the Arkansas State Medical Board. The application shall be verified by oath and shall be in such form as shall be prescribed by the board.

(2) The application shall be accompanied by the license fee and such documents, affidavits, and certificates as are necessary to establish that the applicant possesses the qualifications prescribed by this section, apart from any required examination by the board.

(3) The burden of proof shall be upon the applicant, but the board may make such independent investigation as it may deem advisable to determine whether the applicant possesses the qualifications and whether the applicant has at any time committed any of the acts or offenses herein defined as unprofessional conduct.

(b) No person shall be granted a license to practice medicine in the State of Arkansas unless he or she:

(1) Is at least twenty-one (21) years of age;

(2) Is of good moral character and has not been guilty of acts constituting unprofessional conduct as defined in § 17-95-409;

(3)(A) Is a graduate of:

(i) A recognized United States or Canadian medical school whose entrance requirements and course of instruction have been approved by the Council on Medical Education of the American Medical Association;

(ii) A Canadian eclectic medical school which has been approved by the Council on Medical Education of the National Eclectic Medical Association; or

(iii)(a) A foreign medical school whose entrance requirements and course of instruction have been approved by the board.

(b) He or she must also have:

(1) Served three (3) years as an intern or resident in an accredited postgraduate medical education program in the United States;

(2) Served three (3) years as an intern or resident in a postgraduate medical education program outside the United States, completed all steps of the United States Medical Licensing Examination, obtained Educational Commission for Foreign Medical Graduates certification, completed one (1) year or more of fellowship training accredited by the Accreditation Council for Graduate Medical Education in the United States, and received board certification by the American Board of Medical Specialties; or

(3) Completed one (1) year as an intern or resident in an accredited postgraduate medical education program in the United States and be currently enrolled in an accredited postgraduate medical program in Arkansas.

(B) However, the board at such time as it deems expedient may require of every applicant for licensure:

(i) A properly verified certificate that he or she has served one (1) year of internship in a general accredited hospital; or

(ii) A certificate of his or her service in an accredited postgraduate medical education program as described in subdivision (b)(3)(A)(iii)(b) of this section; and

(4) Has successfully passed an examination approved by the board as set forth in its rules and regulations.

History. Acts 1957, No. 198, §§ 5, 6; 1971, No. 178, § 1; 1977, No. 199, § 1; A.S.A. 1947, §§ 72-605, 72-606; Acts 1992 (1st Ex. Sess.), No. 45, § 1; 1993, No. 1219, § 22; 2005, No. 498, § 1; 2013, No. 549, § 1.

Amendments. The 2013 amendment inserted (b)(3)(A)(iii)(b)(2) and redesignated former (b)(3)(A)(iii)(b)(2) as (b)(3)(A)(iii)(b)(3).

17-95-409. Denial, suspension, or revocation — Grounds.

CASE NOTES

Standing.

Doctor who had allowed his Arkansas medical license to lapse did not have standing to obtain a judgment declaring that subsection (b) of this section did not apply to contracts under the Community Match Loan and Scholarship Program,

established under §§ 6-81-715 to 6-81-717, because the Declaratory Judgment Statute, § 16-111-101 et seq., was applicable only where there was a present actual controversy. *Nelson v. Ark. Rural Med. Practice Loan & Scholarship Bd.*, 2011 Ark. 491, 385 S.W.3d 762 (2011).

17-95-410. Denial, suspension, or revocation — Proceedings.

RESEARCH REFERENCES

ALR. Pretrial Discovery in Disciplinary Proceedings Against Physician. 65 A.L.R.6th 295.

SUBCHAPTER 8 — PHYSICIAN ASSISTANT COMMITTEE

SECTION.

17-95-801. Physician Assistant Committee — Members.

SECTION.

17-95-802. Duties of Physician Assistant Committee.

17-95-801. Physician Assistant Committee — Members.

(a)(1) The Physician Assistant Committee is created with the Arkansas State Medical Board.

(2) The committee shall consist of five (5) members as follows:

(A) Three (3) members who shall be members of the Arkansas State Medical Board; and

(B) Two (2) physician assistant members selected by the board from a list of physician assistants nominated by the Arkansas Academy of Physician Assistants.

(b)(1)(A) Committee members who are physician assistants shall serve three-year terms.

(B) Committee members who are physician assistants shall not serve more than two (2) consecutive terms.

(2) A physician assistant committee member shall serve until a successor is appointed by the board.

(3) If a vacancy occurs among the committee members who are physician assistants, the board shall appoint a new member from a list of three (3) physician assistants nominated by the Arkansas Academy of Physician Assistants to fill the vacancy.

(c)(1) The committee shall elect a chair with powers and duties the committee shall fix.

(2) The chair shall serve a two-year term.

(3) A chair may be elected for no more than two (2) consecutive terms.

(d)(1) A quorum of the committee shall be three (3) members.

(2) The committee shall hold a meeting at least quarterly and at other times the committee considers advisable to review applications for licensure or renewal and for approval of the protocol between the physician assistant and the supervising physician.

(e)(1) The committee members who are physician assistants shall serve without remuneration.

(2) However, if funds are available, the committee members who are physician assistants may receive expense reimbursement and stipends in accordance with § 25-16-902, as follows:

(A) Their actual expenses while attending regular and special meetings of the committee; and

(B) A per diem allowance when in attendance at regular or special meetings of the committee.

(f) The members of the committee who are members of the board shall receive remuneration as now provided to members of the board.

History. Acts 2011, No. 1207, § 1.

17-95-802. Duties of Physician Assistant Committee.

The Physician Assistant Committee shall:

(1) Review all applications for physician assistants' licensure and for renewal of physician assistants' licensure;

(2) Review protocols between a physician assistant and a supervising physician;

(3) Recommend to the Arkansas State Medical Board approval or disapproval of applications submitted under subdivision (1) of this section and of protocols reviewed under subdivision (2) of this section; and

(4) Recommend the approval, disapproval, or modification of the application for prescriptive privileges for a physician assistant.

History. Acts 2011, No. 1207, § 1.

CHAPTER 97

PSYCHOLOGISTS AND PSYCHOLOGICAL EXAMINERS

SUBCHAPTER.

3. LICENSING.

SUBCHAPTER 3 — LICENSING

SECTION.

17-97-312. Criminal background checks.

17-97-309. Fees.

A.C.R.C. Notes. Acts 2011, No. 1070, § 17, provided: “AUTISM TREATMENT AND COORDINATION. The Department of Human Services — Division of Developmental Disabilities Services shall promulgate rules and regulations regarding the licensure and oversight of Applied Behavior Analysts as described in Arkansas Code § 23-99-418. The rules and regulations shall include a requirement for a licensure application fee equal to that charged to applicants to be licensed as a psychologist as described in Arkansas Code § 17-97-309. Proceeds from this fee are declared as cash funds.”

Acts 2012, No. 219, § 17, provided: “AUTISM TREATMENT AND COORDINATION. The Department of Human Services — Division of Developmental Disabilities Services shall promulgate rules and regulations regarding the licensure and oversight of Applied Behavior Ana-

lysts as described in Arkansas Code § 23-99-418. The rules and regulations shall include a requirement for a licensure application fee equal to that charged to applicants to be licensed as a psychologist as described in Arkansas Code § 17-97-309. Proceeds from this fee are declared as cash funds.”

Acts 2013, No. 1371, § 16, provided: “AUTISM TREATMENT AND COORDINATION. The Department of Human Services — Division of Developmental Disabilities Services shall promulgate rules and regulations regarding the licensure and oversight of Applied Behavior Analysts as described in Arkansas Code § 23-99-418. The rules and regulations shall include a requirement for a licensure application fee equal to that charged to applicants to be licensed as a psychologist as described in Arkansas Code § 17-97-309. Proceeds from this fee are declared as cash funds.”

17-97-312. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas Psychology Board shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) Except as provided in subdivision (m)(1) of this section, no person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;
- (9) Aggravated robbery as prohibited in § 5-12-103;
- (10) Battery in the first degree as prohibited in § 5-13-201;
- (11) Aggravated assault as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (14) Rape as prohibited in § 5-14-103;
- (15) Sexual indecency with a child as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
- (17) Incest as prohibited in § 5-26-202;
- (18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;
- (21) Permitting abuse of a minor as prohibited in § 5-27-221;
- (22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse as prohibited in § 5-28-103;
- (24) Theft of property as prohibited in § 5-36-103;
- (25) Theft by receiving as prohibited in § 5-36-106;

- (26) Arson as prohibited in § 5-38-301;
- (27) Burglary as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 — 5-64-442;
- (29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;
- (30) Stalking as prohibited in § 5-71-229;
- (31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;
- (32) Computer child pornography as prohibited in § 5-27-603; and
- (33) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) Except as provided in subdivision (m)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding a letter of provisional licensure has pleaded guilty or nolo contendere to or been found guilty of any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

- (A) An affected applicant for licensure; or
- (B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the crime;
- (D) Subsequent work history;
- (E) Employment references;
- (F) Character references; and
- (G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative or the person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the department.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(k) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m)(1) For purposes of this section, an expunged record of a conviction or plea of guilty of or nolo contendere to an offense listed in subsection (f) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (m)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Kidnapping as prohibited in § 5-11-102;

(D) Rape as prohibited in § 5-14-103;

(E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;

(F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-206;

(G) Incest as prohibited in § 5-26-202;

(H) Arson as prohibited in § 5-38-301;

(I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and

(J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1997, No. 1317, § 12; 2003, No. 1087, § 16; 2003, No. 1385, § 1; 2003, No. 1482, § 18; 2005, No. 1923, § 3; 2011, No. 570, § 122.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The intent of this act is to implement compre-

hensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment, in (f)(28), inserted "the former" and "and §§ 5-64-419 — 5-64-442."

CHAPTER 100

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.

2. BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY.

3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-100-103. Definitions.

17-100-104. Exemptions.

17-100-103. Definitions.

As used in this chapter:

(1) “Audiologist” means an individual who practices audiology by any title or description of services incorporating the words “audiologist”, “hearing clinician”, “hearing therapist”, or any similar title or description of services;

(2) “Audiology” means the application of principles, methods, and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, or rehabilitation related to hearing and balance disorders of the auditory system for the purpose of evaluating, identifying, preventing, ameliorating, or modifying such disorders and conditions in individuals and groups of individuals;

(3) “Person” means any individual, organization, or corporate body, except that only an individual may be licensed under this chapter;

(4) “Speech-language pathologist” means an individual who practices speech-language pathology by any title or description of services incorporating the words “speech-language pathologist”, “speech therapist”, “speech correctionist”, “speech clinician”, “language pathologist”, “language therapist”, “logopedist”, “communicologist”, “voice therapist”, “voice pathologist”, or any similar title or description of service;

(5) “Speech-language pathology” means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, or language, and dysphagia for the purpose of evaluating, preventing, ameliorating, or modifying such disorders and conditions in individuals and groups of individuals;

(6) “Speech-language pathology support personnel” or any variation, synonym, or coinage of the term means an individual who holds a bachelor’s degree in speech pathology or an individual who meets minimum qualifications established by the Board of Examiners in Speech-Language Pathology and Audiology, which are less than those established by this chapter as necessary for licensing as a speech-language pathologist, and who provides services as prescribed, directed, and supervised by a speech-language pathologist licensed under this chapter;

(7) “Telepractice” means telespeech, teleaudiology, teleSLP, telehealth, or telerehabilitation when used separately or together; and

(8) “Telepractice service” means the application of telecommunication technology equivalent in quality to services delivered face-to-face to deliver speech-language pathology or audiology services, or both, at a distance for assessment, intervention or consultation, or both.

History. Acts 1975, No. 277, § 7; A.S.A. 1947, § 72-1807; Acts 1993, No. 121, § 3; 1995, No. 826, § 1; 2013, No. 219, § 1.

Amendments. The 2013 amendment deleted former (1), (2), and (5) and redesignated the remaining subdivisions accordingly; rewrote (2); inserted “and dysphagia” in (5); and added (7) and (8).

17-100-104. Exemptions.

Nothing in this chapter shall be construed as preventing or restricting:

- (1) A physician or surgeon from engaging in the practice of medicine in this state;
- (2) A hearing aid dealer from engaging in the business of fitting and selling hearing aids in this state in accordance with § 17-84-101 et seq.;
- (3) Any person licensed in this state by any other law from engaging in the profession or occupation for which he or she is licensed;
- (4)(A) A person from performing speech-language pathology or audiology services solely within the confines or under the jurisdiction of a public school system if that person holds a valid and current certificate as a speech therapist or speech-language pathologist issued by the Department of Education.
- (B) However, without obtaining a license under this chapter, such a person may consult with or disseminate his or her research findings and other specific information to speech-language pathologists and audiologists outside the jurisdiction of the school district by which he or she is employed. Such a person may also offer lectures to the public for a fee, monetary or other, without being licensed under this chapter.
- (C) The person may additionally elect to be subject to this chapter;
- (5) The activities and services of persons pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university, if the activities and services constitute a part of a supervised course of study and if the persons are designated as speech-language pathology interns, speech-language pathology trainees, audiology interns, audiology trainees, or by other such titles clearly indicating the training status appropriate to their level of training;
- (6)(A) The performance of speech-language pathology or audiology services in this state by any person not a resident of this state who is not licensed under this chapter, if the services are performed for no more than five (5) days in any calendar year and in cooperation with a speech-language pathologist or audiologist licensed under this chapter and if the person meets the qualifications and requirements for application for licensure described in § 17-100-302(b).
- (B) The performance of speech-language pathology or audiology services in this state by a person not a resident of this state who is not licensed under this chapter, but who is licensed under the law of another state which has established licensure requirements at least equivalent to those established by § 17-100-302(b), or who is the holder of the American Speech-Language-Hearing Association certificate of clinical competence in speech-language pathology or audiology

or its equivalent, if such services are performed in the state for no more than thirty (30) days in any fiscal year and are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter;

(7) A person from performing speech-language pathology or audiology services solely within the confines of the person's duties as an employee of the State of Arkansas, provided that the person was an employee of the State of Arkansas on January 1, 1993, and, furthermore, this exemption applies to such state employees who subsequently transfer to another agency of the state; or

(8)(A) A person from performing speech-language pathology services solely within the confines of the person's duties as an employee of any entity licensed or certified as a developmental disability services community provider by the Division of Developmental Disability Services of the Department of Human Services, if that person holds a minimum of a bachelor's degree in speech-language pathology and is supervised by a licensed speech-language pathologist.

(B) The supervision of the bachelor's level personnel shall be in accordance with the rules adopted by the Board of Examiners in Speech-Language Pathology and Audiology.

(C) The board shall adopt rules that set forth the scope and restrictions relating to bachelor's level personnel.

(D) These persons shall be required to comply with state regulations as speech-language pathology support personnel no later than January 1, 1997.

History. Acts 1975, No. 277, § 9; 1980 (1st Ex. Sess.), No. 44, § 1; A.S.A. 1947, § 72-1809; Acts 1993, No. 121, § 4; 1995, No. 826, § 3; 2013, No. 219, § 2.

Amendments. The 2013 amendment rewrote (8)(B) and (8)(C).

SUBCHAPTER 2 — BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

SECTION.

17-100-201. Creation — Members.

17-100-206. Disposition of funds — Reports.

SECTION.

17-100-207. Audiologists — Licensing.

17-100-201. Creation — Members.

(a) There is established as an independent agency of the executive branch of the government of the State of Arkansas the Board of Examiners in Speech-Language Pathology and Audiology.

(b)(1)(A) The board shall be composed of eight (8) members appointed by the Governor to three-year terms.

(B) The members of the board shall be residents of this state for at least two (2) years immediately preceding their appointments.

(2)(A)(i) Seven (7) members of the board shall be appointed from names submitted by the Arkansas Speech-Language-Hearing Asso-

ciation, the American Academy of Audiology, or other professional groups or individuals.

(ii) Not less than thirty (30) days before the end of each fiscal year, the association may recommend not more than three (3) persons for each vacancy.

(B) The board shall have the following professional members:

(i) Two (2) speech-language pathologists;

(ii) Two (2) audiologists; and

(iii) A fifth member who shall be either a speech-language pathologist or an audiologist.

(C) There shall be one (1) consumer member and one (1) public representative member, neither of whom shall be engaged in a health-related profession.

(3)(A) One (1) member of the board shall represent the elderly.

(B) The representative of the elderly shall:

(i) Be sixty (60) years of age or older;

(ii) Not be actively engaged in or retired from the practice of speech-language pathology or audiology;

(iii) Be appointed from the state at large, subject to confirmation by the Senate; and

(iv) Be a full voting member but shall not participate in the grading of examinations.

(4) The consumer representative position and the representative of the elderly position may not be filled by the same person.

(c)(1) No person shall be eligible to serve more than two (2) full consecutive terms.

(2) Terms shall begin on the first day of the fiscal year and end on the last day of the fiscal year in which members are appointed before commencing the terms prescribed by this section.

(d)(1) In the event of a midterm vacancy, the association may recommend as soon as practicable not more than three (3) persons to fill the professional, consumer, or public representative vacancies.

(2) As soon as practicable after a recommendation under subdivision (d)(1) of this section has been made, the Governor shall appoint one (1) of these persons who shall fill the unexpired term.

(e) Board members may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1975, No. 277, §§ 3, 6; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 72-1803, 72-1806; Acts 1993, No. 121, § 6; 1997, No. 250, § 172; 2001, No. 1553, § 27; 2013, No. 219, §§ 3, 4.

Amendments. The 2013 amendment

inserted “the American Academy of Audiology” in (b)(2)(A)(i); added the (d)(1) and (d)(2) designations; and substituted “as practicable after a recommendation under subdivision (d)(1) of this section has been made” for “thereafter as practicable” in (d)(2).

17-100-202. Powers and duties.

A.C.R.C. Notes. Acts 2011, No. 297, § 4, provided: "INVESTIGATOR. The Board of Examiners in Speech-Language Pathology and Audiology shall contract with an outside investigator, as needed, to perform investigations and conduct inspections of alleged wrongdoing. The duties of the investigator hired shall include, but not be limited to, investigation and inspection of all complaints as determined by the Board, to determine whether or not any persons have

"(1) Practiced their profession in such a way as to endanger the general health and welfare of the public; or

"(2) Otherwise violated the practice act or rules and regulations of the Speech-Language Pathology and Audiology Board."

Acts 2012, No. 35, § 4, provided: "INVESTIGATOR. The Board of Examiners in Speech-Language Pathology and Audiology shall contract with an outside investigator, as needed, to perform investigations and conduct inspections of alleged wrongdoing. The duties of the investigator hired shall include, but not be limited to, investigation and inspection of all com-

plaints as determined by the Board, to determine whether or not any persons have

"(1) Practiced their profession in such a way as to endanger the general health and welfare of the public; or

"(2) Otherwise violated the practice act or rules and regulations of the Speech-Language Pathology and Audiology Board."

Acts 2013, No. 63, § 4, provided: "INVESTIGATOR. The Board of Examiners in Speech-Language Pathology and Audiology shall contract with an outside investigator, as needed, to perform investigations and conduct inspections of alleged wrongdoing. The duties of the investigator hired shall include, but not be limited to, investigation and inspection of all complaints as determined by the Board, to determine whether or not any persons have

"(1) Practiced their profession in such a way as to endanger the general health and welfare of the public; or

"(2) Otherwise violated the practice act or rules and regulations of the Speech-Language Pathology and Audiology Board."

17-100-206. Disposition of funds — Reports.

(a) All fees and other funds received by the Board of Examiners in Speech-Language Pathology and Audiology shall be deposited into a bank account in the name of the board in one (1) or more banks in this state and shall be used by the board exclusively for payment of reasonable and necessary salaries, maintenance, and operating expenses in the performance of duties imposed on the board under the provisions of this chapter.

(b) The board shall report monthly to the Department of Finance and Administration the amount and source of all revenue received by it pursuant to this chapter during the preceding month.

(c) All appropriate expenses incurred by the board in the administration of the provisions of this chapter shall be paid when vouchers relating to such expenses are exhibited as having been approved by the board.

(d)(1) The board shall be financed from income accruing from fees, licenses, and other income collected by the board.

(2) All employee salaries and other expenses, which may include full or partial financing of continuing professional education programs adopted by the board under § 17-100-306, shall be paid as budgeted after budgets are approved or within the limitations of any appropri-

tion for that purpose that may be included in any appropriate Arkansas appropriations law.

(e) The board will have the authority to establish and change fees for application, examination, renewal, inactivation, reactivation, and delinquency purposes.

History. Acts 1975, No. 277, §§ 5, 17; A.S.A. 1947, §§ 72-1805, 72-1817; Acts 2013, No. 219, § 5.

Amendments. The 2013 amendment

rewrote (d)(1); substituted “adopted” for “promulgated” in (d)(2); and inserted “inactivation, reactivation” in (e).

17-100-207. Audiologists — Licensing.

(a) Notwithstanding § 17-84-101 et seq. or any other law to the contrary, a person who is licensed by the Board of Examiners in Speech-Language Pathology and Audiology under § 17-100-301 et seq. as an audiologist in this state shall not be required to be licensed by the Arkansas Board of Hearing Instrument Dispensers.

(b) The Board of Examiners in Speech-Language Pathology and Audiology shall promulgate regulations governing the dispensing of hearing aids by audiologists licensed by the Board of Examiners in Speech-Language Pathology and Audiology, provided that such regulations shall be no less stringent than the regulations adopted by the Arkansas Board of Hearing Instrument Dispensers for the dispensing of hearing aids.

History. Acts 1991, No. 1171, § 1; 2013, No. 219, § 6.

Amendments. The 2013 amendment deleted the second sentence in (a).

SUBCHAPTER 3 — LICENSING

SECTION.	SECTION.
17-100-302. Eligibility.	17-100-307. Denial, suspension, revocation, or other disciplinary action — Reinstatement.
17-100-303. Licensure — Examination.	
17-100-304. Reciprocity.	
17-100-305. Annual renewal.	17-100-308. Fees.

17-100-302. Eligibility.

(a) The Board of Examiners in Speech-Language Pathology and Audiology shall issue a license to a person who meets the requirements of this chapter and pays to the board the application for initial license fee prescribed in § 17-100-308.

(b) To be eligible for licensure by the board as a speech-language pathologist or audiologist, a person shall:

- (1) Be of good moral character;

(2) Possess at least a master’s degree in the area of speech-language pathology or a master’s degree in audiology obtained on or before December 30, 2006, or a doctoral degree obtained after January 1, 2007, from an educational institution recognized by the board;

(3) Submit evidence of the completion of the educational, clinical experience, and employment requirements, which shall be based on appropriate national standards and prescribed by the rules adopted under this chapter; and

(4) Pass an examination approved by the board before the board approves a license.

(c) The board shall issue a provisional license to a person who meets the requirements of this chapter, submits the appropriate application, and pays to the board the application for initial license fee prescribed in § 17-100-308.

(d) To be eligible for provisional licensure by the board as a speech-language pathologist or audiologist, a person shall:

(1) Be of good moral character;

(2) Possess at least a master's degree in the area of speech-language pathology or audiology, as the case may be, from an educational institution recognized by the board;

(3) Be in the process of completing the postgraduate professional experience requirement; and

(4) Pass an examination approved by the board.

(e) The purpose of a provisional license is to permit a person to practice speech-language pathology or audiology while completing the postgraduate professional experience as required by this chapter. A person holding a provisional license is authorized to practice speech-language pathology or audiology only while working under the supervision of a person fully licensed by this state in accordance with this chapter.

(f) The board shall have the authority to adopt rules and regulations regarding the term and conditions for which a provisional license is granted.

History. Acts 1975, No. 277, §§ 10, 14; A.S.A. 1947, §§ 72-1810, 72-1814; Acts 1993, No. 121, § 10; 2013, No. 219, § 7.

Amendments. The 2013 amendment substituted "application for initial license"

for "initial license" in (a) and (c); rewrote (b)(2); substituted "rules adopted under" for "rules and regulations adopted pursuant to" in (b)(3); and rewrote (b)(4).

17-100-303. Licensure — Examination.

(a)(1) A person eligible for licensure under § 17-100-302 and desirous of licensure shall make application to the Board of Examiners in Speech-Language Pathology and Audiology upon a form and in such a manner as the board shall prescribe.

(2) Any application shall be accompanied by the fee prescribed by § 17-100-308, which shall in no case be refunded.

(b)(1) Each applicant for licensure under this chapter shall be examined by the board in a written examination if the board deems a written examination to be appropriate.

(2) Standards for acceptable performance shall be established.

(3) Applicants shall be examined at a time and place and under such supervision as the board may determine. Examinations shall be given

at such places within this state as the board may determine at least two (2) times each year, and the board shall make public, in a manner it considers appropriate, and shall appropriately notify all individual applicants of, the time and place of the administration of examinations.

(4) The board may examine in whatever theoretical or applied fields of speech pathology and audiology it considers appropriate and may examine with regard to a person's professional skills and judgment in the utilization of speech pathology or audiology techniques and methods.

(5) The board shall maintain a permanent record of all examination results.

History. Acts 1975, No. 277, §§ 11, 12; A.S.A. 1947, §§ 72-1811, 72-1812; Acts 2013, No. 219, § 8.

Amendments. The 2013 amendment

added "Licensure" to the section heading; rewrote (a)(1); added "if the board deems a written examination to be appropriate" at the end of (b)(1).

17-100-304. Reciprocity.

(a) The Board of Examiners in Speech-Language Pathology and Audiology may waive the examination and grant a license to any applicant who shall present proof of current licensure in another state, the District of Columbia, or territory of the United States which maintains professional standards considered by the board to be equivalent to those set forth in this chapter.

(b) The board may waive the examination and grant a license to any person certified as clinically competent by the American Speech-Language-Hearing Association, the American Academy of Audiology, or the American Board of Audiology in the area for which the person is applying for licensure.

(c) A person certified by the American Speech-Language-Hearing Association, the American Academy of Audiology, or the American Board of Audiology or licensed under the law of another state, a territory of the United States, or the District of Columbia and that has requirements at least equal to those of Arkansas as a speech pathologist or audiologist who has applied for a license and paid the appropriate fees may perform speech pathology and audiology services in this state.

History. Acts 1975, No. 277, §§ 11, 13; A.S.A. 1947, §§ 72-1811, 72-1813; Acts 2013, No. 219, § 9.

Amendments. The 2013 amendment

inserted "the American Academy of Audiology, or the American Board of Audiology" in (b); and rewrote (c).

17-100-305. Annual renewal.

(a) Licenses issued under this chapter expire and become invalid at 12:00 midnight, June 30, of each year if not renewed.

(b) To maintain a license, a person licensed under this chapter shall pay a fee for renewal of license to the Board of Examiners in Speech-Language Pathology and Audiology on or before June 30 of each year.

(c)(1)(A) If a request for renewal is postmarked on or before July 15:

- (i) The request shall not be considered late; and
- (ii) The licensee shall not be:
 - (a) Considered as practicing without a license; or
 - (b) Charged a late fee.

(B) If payment of the renewal fee is postmarked on or after July 16 of any given year, the board may renew a license upon payment of the renewal of license fee plus a late renewal payment penalty, which shall equal the amount prescribed for late penalty per month under § 17-100-308.

(C) A license renewed under this subsection becomes effective on the day after the request for renewal is postmarked.

(2) A person who requests renewal of a license, whose license has expired, shall not be required to submit to examination as a condition to renewal.

(d) A suspended license is subject to expiration and may be renewed as provided in this section, but the renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended.

(e)(1) A person who fails to renew his or her license within five (5) years after the date of its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter.

(2) However, the person may apply for and obtain a new license if he or she meets the requirements of this chapter.

History. Acts 1975, No. 277, § 16; A.S.A. 1947, § 72-1816; Acts 2013, No. 219, § 10. rewrote (b) and (c); deleted former (e) and redesignated former (f) as (e); and added the (e)(1) and (e)(2) designations.

Amendments. The 2013 amendment

17-100-307. Denial, suspension, revocation, or other disciplinary action — Reinstatement.

(a) The Board of Examiners in Speech-Language Pathology and Audiology may refuse to issue or renew a license or may suspend or revoke a license when the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct may result from, but not necessarily be limited to:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(2) Being guilty of unprofessional conduct as defined by the rules established by the board or violating the code of ethics adopted and published by the board;

(3)(A) Being convicted of a felony in any court of the United States if the acts for which the licensee or applicant is convicted are found by the board to have a direct bearing on whether he or she should be entrusted to serve the public in the capacity of a speech pathologist or audiologist.

(B) A plea or verdict of guilty made to a charge of a felony or of any offense involving moral turpitude is a conviction within the meaning of this section.

(C) At the direction of the board, and after due notice and an administrative hearing in accordance with the provisions of applicable Arkansas laws, the license of the person so convicted shall be suspended or revoked or the board shall decline to issue a license when:

- (i) The time for appeal has elapsed;
 - (ii) The judgment of conviction has been affirmed on appeal; or
 - (iii) An order granting probation has been made suspending the imposition of sentence, without regard to a subsequent order under the provisions of state law allowing the withdrawal of a guilty plea and the substitution of a not guilty plea, or the setting aside of a guilty verdict, or the dismissal of the acquisition, information, or indictment;
 - (4) Violating any lawful order, rule, or regulation rendered or adopted by the board; or
 - (5) Violating any provision of this chapter.
- (b) The board shall deny any application for, or issue a letter of reprimand, or censure, suspend, revoke, or impose probationary conditions upon, the license or licensee as ordered by the board in any decision made after a hearing as provided in this chapter.
- (c)(1) No sooner than five (5) years after the date of revocation of a license under this section, an applicant may again apply for licensure.
- (2) The board may accept or reject an application for licensure under this section and may impose additional requirements.

History. Acts 1975, No. 277, § 15; A.S.A. 1947, § 72-1815; Acts 2013, No. 219, § 11. **Amendments.** The 2013 amendment rewrote (c).

17-100-308. Fees.

(a) The Board of Examiners in Speech-Language Pathology and Audiology shall prescribe and publish in a manner that it deems appropriate fees in amounts determined by the board for the following purposes:

- (1) Application for initial license;
- (2) Renewal of license;
- (3) Late penalty per month;
- (4) Inactivation; and
- (5) Reactivation.

(b) The board may by rule provide for the waiver of all or part of the renewal fee if the license is issued less than one hundred twenty (120) days before the date on which it will expire.

History. Acts 1975, No. 277, § 17; A.S.A. 1947, § 72-1817; Acts 1993, No. 121, § 11; 2013, No. 219, § 12. **Amendments.** The 2013 amendment substituted "initial license" for "examination" in (a)(1); deleted former (a)(2) and

redesignated the remaining subdivisions accordingly; added (a)(4) and (a)(5); and rewrote (b).

CHAPTER 101

VETERINARIANS AND ANIMAL TECHNICIANS

SUBCHAPTER.

3. LICENSING.

SUBCHAPTER 3 — LICENSING

SECTION.

17-101-307. License required — Exemptions.

SECTION.

17-101-315. Equine teeth floating and equine massage.

17-101-307. License required — Exemptions.

(a) No person may practice veterinary medicine in this state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the Veterinary Medical Examining Board.

(b) This chapter shall not be construed to prohibit:

(1) Employees of the federal or state government or employees of local government who are certified by an agency approved by the board to perform euthanasia from performing their official duties;

(2) Regular students in a veterinary school or college from performing duties or actions assigned by the school or college or working under the direct personal supervision of a veterinarian licensed in the State of Arkansas;

(3) Reciprocal aid of neighbors in performing routine accepted livestock management practices without compensation;

(4) Any veterinarian licensed in any foreign jurisdiction from consulting with a licensed veterinarian;

(5) The owner of an animal, his or her consignees, and their employees from performing routine accepted livestock management practices in the care of animals belonging to the owner;

(6) A member of the faculty of a veterinary school from performing his or her regular functions or a person from lecturing or giving instruction or demonstration at a veterinary school or in connection with a continuing education course or seminar for licensed veterinarians or registered technicians;

(7) A person from engaging in bona fide scientific research that reasonably requires experimentation involving animals;

(8) Any person:

(A) Engaging in the art or profession of horseshoeing;

(B) Training, except that the training shall not include diagnosing, prescribing, or dispensing of any therapeutic agent;

(C) Selling medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases as permitted by law,

by any pharmacist, merchant, or manufacturer at his or her regular place of business;

(D) Collecting, preparing, or freezing semen; and

(E) Performing nonsurgical artificial insemination;

(9)(A) Any act, task, or function performed by a veterinary technician at the direction of and under the supervision of a licensed veterinarian, when:

(i) The technician is certified by and annually registered with the board as one qualified by training or experience to function as an assistant to a veterinarian;

(ii) The act, task, or function is performed at the direction of and under the supervision of a licensed veterinarian in accordance with rules promulgated by the board; and

(iii) The services of the veterinary technician are limited to assisting the veterinarian in the particular fields for which the assistant has been trained, certified, and registered.

(B) Subdivision (b)(9)(A) of this section shall not limit or prevent any veterinarian from delegating to a qualified person any acts, tasks, or functions which are otherwise permitted by law but which do not include diagnosis, prescribing medication, or surgery; or

(10) Any chiropractor licensed in this state and certified by the American Veterinary Chiropractic Association from performing chiropractic upon animals so long as the chiropractic is performed under the immediate supervision of an Arkansas-licensed veterinarian.

History. Acts 1975, No. 650, § 14; added present (b)(8); redesignated former A.S.A. 1947, § 72-1145; Acts 1993, No. 1198, § 1; 1995, No. 1348, § 5; 2001, No. 1741, § 6; 2011, No. 1031, § 1. (b)(8) and (b)(9) as present (b)(9) and (b)(10); and deleted “and regulations” following “rules” in present (b)(9)(A)(ii).

Amendments. The 2011 amendment

17-101-315. Equine teeth floating and equine massage.

(a) The Veterinary Medical Examining Board is prohibited from enforcing board policy regarding equine teeth floating and equine massage therapy by either investigating or prosecuting an individual practitioner engaged in equine teeth floating or an individual practitioner practicing equine massage therapy until July 1, 2013.

(b)(1) Prior to engaging in the practice of equine teeth floating or equine massage therapy in the state, an individual practitioner shall present to the board signed letters of recommendation from two (2) clients who have previously employed the individual practitioner and who bear witness to the individual practitioner’s ability to perform equine teeth floating or equine massage therapy or both.

(2) The letters of recommendation shall be presented to the board prior to providing service to a client or performing any procedure on any animal.

History. Acts 2011, No. 1031, § 2.

CHAPTER 102

ACUPUNCTURISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-102-102. Definitions.

17-102-102. Definitions.

As used in this chapter:

(1) “Acupuncture” means the insertion, manipulation, and removal of needles from the body and the use of other modalities and procedures at specific locations on the body for the prevention, cure, or correction of a malady, illness, injury, pain, or other condition or disorder by controlling and regulating the flow and balance of energy and functioning of the patient to restore and maintain health, but acupuncture shall not be considered surgery;

(2) “Acupuncturist” means a person licensed under this chapter to practice acupuncture and related techniques in this state and includes the terms “licensed acupuncturist”, “certified acupuncturist”, “acupuncture practitioner”, and “Oriental acupuncture practitioner”;

(3) “Board” means the Arkansas State Board of Acupuncture and Related Techniques;

(4) “Chiropractic physician” means a person licensed under the Arkansas Chiropractic Practices Act, § 17-81-101 et seq.

(5) “Moxibustion” means the use of heat on, or above, or on acupuncture needles, at specific locations on the body for the prevention, cure, or correction of a malady, illness, injury, pain, or other condition or disorder; and

(6)(A) “Related techniques” means the distinct system of basic health care that uses all allied diagnostic and treatment techniques of acupuncture, Oriental, traditional, and modern, for the prevention or correction of a malady, illness, injury, pain, or other condition or disorder by controlling and regulating the flow and balance of energy and functioning of the patient to restore and maintain health.

(B) As used in this subdivision (6), “related techniques” include, but are not limited to, acupuncture, moxibustion or other heating modalities, cupping, magnets, cold laser, electroacupuncture including electrodermal assessment, application of cold packs, ion pumping cord, lifestyle counseling, including general eating guidelines, tui na, massage incidental to acupuncture, breathing and exercising techniques, and the recommendation of Chinese herbal medicine lawfully and commercially available in the United States. Provided, “related techniques”, including, but not limited to, tui na, shall not involve

manipulation, mobilization, or adjustment to the spine or extraspinal articulations.

History. Acts 1997, No. 816, § 2; 2011, No. 859, § 12. deleted “as a doctor of healing arts” following “under this chapter” in (2).

Amendments. The 2011 amendment

SUBCHAPTER 3 — LICENSING

SECTION.

17-102-302. [Repealed.]

17-102-302. [Repealed.]

Publisher’s Notes. This section, concerning the effect of previous legislation on acupuncture and related licenses existing as of August 1, 1997, was repealed by Acts 2013, No. 1147, § 3. The section was derived from Acts 1997, No. 816, § 3.

CHAPTER 103 SOCIAL WORKERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS SOCIAL WORK LICENSING BOARD.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-103-104. Exemptions.

17-103-104. Exemptions.

(a) This chapter shall not be construed to prevent members of the clergy, Christian Science practitioners, and licensed professionals such as physicians, nurses, psychologists, counselors, and attorneys from doing work within the standards and ethics of their respective professions, provided that they do not hold themselves out to the public by any title or description of services as being social workers as defined under this chapter.

(b) This chapter shall not be construed to limit or prohibit the employment by licensed hospitals in this state of persons who perform services commonly within the definition of social work or practices performed by social workers, so long as the services are performed within the course of and scope of their employment as employees of the hospitals. Nor shall this chapter require any regular employee of a licensed hospital in this state to be licensed as a licensed social worker, a licensed master social worker, or a licensed certified social worker as a condition of employment by or performance of services as a social worker while employed in a licensed hospital in this state.

(c) This chapter shall not be construed as limiting the activities and services of a graduate or undergraduate student for the practice of social work from an accredited educational institution.

(d)(1) This chapter shall not be construed to require any person to be licensed as a licensed social worker who is engaged in the practice of a specialty as an employee of any agency or department of the state in the following job classifications, but only if engaged in that practice as an employee of such an agency or department:

- (A) Family service worker;
- (B) Social service worker; and
- (C) Adult protective services worker.

(2) It is the intent of the General Assembly to restrict licensure to those individuals who are represented to be social workers. It is not the intent of the General Assembly to license persons such as state employees in the job classifications of social service workers and family service workers.

History. Acts 1999, No. 1122, § 1; substituted “This chapter shall not” for 2009, No. 297, § 1; 2011, No. 859, § 13. “Nothing in this chapter shall” at the
Amendments. The 2011 amendment beginning of (a), (b), (c), and (d)(1).

SUBCHAPTER 2 — ARKANSAS SOCIAL WORK LICENSING BOARD

SECTION.

17-103-205. Fees.

17-103-205. Fees.

The Arkansas Social Work Licensing Board shall establish, charge, and collect for:

- (1) The filing of an application for a license under this chapter, a nonrefundable fee of not more than one hundred dollars (\$100);
- (2) A nonrefundable renewal of a license issued in accordance with this chapter, a fee of not more than eighty dollars (\$80.00);
- (3) Replacement of a license, a nonrefundable fee of not less than twenty dollars (\$20.00);
- (4) Endorsement of an Arkansas social work license, a nonrefundable fee of twenty dollars (\$20.00);
- (5) Renewal of a license after the expiration date, a nonrefundable late fee of not more than eighty dollars (\$80.00);
- (6) A criminal background check processing fee, the fee amount to be determined by the Department of Arkansas State Police;
- (7) The filing of an application for a certificate of registration under this chapter, a nonrefundable fee of not more than twenty-five dollars (\$25.00); and
- (8) Renewal of a certificate of registration issued under this chapter, a nonrefundable fee of not more than ten dollars (\$10.00).

History. Acts 1999, No. 1122, § 1; **Amendments.** The 2013 amendment 2001, No. 1481, § 1; 2013, No. 409, § 1. rewrote the section.

SUBCHAPTER 3 — LICENSING**SECTION.**

17-103-307. Criminal background checks.

17-103-307. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas Social Work Licensing Board shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) Except as provided in subdivision (m)(1) of this section, no person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;
- (9) Aggravated robbery as prohibited in § 5-12-103;
- (10) Battery in the first degree as prohibited in § 5-13-201;
- (11) Aggravated assault as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (14) Rape as prohibited in § 5-14-103;
- (15) Sexual indecency with a child as prohibited in § 5-14-110;

(16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;

(17) Incest as prohibited in § 5-26-202;

(18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;

(19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;

(20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;

(21) Permitting abuse of a minor as prohibited in § 5-27-221(a);

(22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;

(23) Felony adult abuse as prohibited in § 5-28-103;

(24) Theft of property as prohibited in § 5-36-103;

(25) Theft by receiving as prohibited in § 5-36-106;

(26) Arson as prohibited in § 5-38-301;

(27) Burglary as prohibited in § 5-39-201;

(28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 — 5-64-442;

(29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;

(30) Stalking as prohibited in § 5-71-229;

(31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;

(32) Computer child pornography as prohibited in § 5-27-603; and

(33) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) Except as provided in subdivision (m)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding such a letter of provisional licensure has pleaded guilty or nolo contendere to or been found guilty of any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the crime;
- (D) Subsequent work history;
- (E) Employment references;
- (F) Character references; and
- (G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative or the person whose license is subject to revocation or his or her authorized representative. No record, file, or document shall be removed from the custody of the department.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(k) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (f) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (m)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

- (A) Capital murder as prohibited in § 5-10-101;
- (B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (C) Kidnapping as prohibited in § 5-11-102;
- (D) Rape as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;
- (F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-206;
- (G) Incest as prohibited in § 5-26-202;
- (H) Arson as prohibited in § 5-38-301;
- (I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and
- (J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1999, No. 1122, § 1; 2003, No. 1087, § 17; 2003, No. 1384, § 1; 2005, No. 1923, § 4; 2011, No. 570, § 123.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: “Legislative intent. The intent of this act is to implement compre-

hensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs.”

Amendments. The 2011 amendment, in (f)(28), inserted “the former” and “and §§ 5-64-419 — 5-64-442.”

CHAPTER 107

ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

SUBCHAPTER.

3. LICENSING.

SUBCHAPTER 3 — LICENSING

SECTION.

17-107-311. [Repealed.]

17-107-311. [Repealed.]

Publisher’s Notes. This section, concerning the grandfathering of certain licenses issued by the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory

Board, was repealed by Acts 2013, No. 1147, § 4. The section was derived from Acts 2007, No. 174, § 1.

